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Tuesday
March 17, 1987

Briefings on How To Use the Federal Register—
For information on briefings in Atlanta, GA, and Washington, DC, see announcement on the inside cover of this issue.

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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

WHEN: March 26; at 9 am.
WHERE: L.D. Strom Auditorium, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, GA.
RESERVATIONS: Call the Atlanta Federal Information Center, 404–331–2170.

WASHINGTON, DC

WHEN: March 31; at 9 am.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: Beverly Fayson, 202–523–3517

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 227

Nutrition Education and Training Program; Establishment of a $50,000 Minimum Grant Level

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes a minimum grant level of $50,000 to State agencies in the apportionment of funds authorized for conduct of the Nutrition Education and Training Program (NET). Under the new apportionment formula, any State whose annual apportionment would fall below this amount, as calculated on the basis of school enrollment, will receive no less than $50,000 for NET Program operation.

EFFECTIVE DATE: March 17, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia N. Daniels, (703) 756-3554.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been reviewed under E.O. 12291 and has been classified as not major because it does not meet any of the three criteria identified. This action will not have an annual effect on the ecomomy of $100 million or more, nor will it result in major increases in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354). The Administrator of the Food and Nutrition Service has certified that this rule will not have significant economic impact on a substantial number of small entities.

This final rule implements a provision included in Pub. L. 99-500 and Pub. L. 99-591 which is nondiscretionary. The Administrator has determined pursuant to 5 U.S.C. 553(b) and (d) that prior public comment is unnecessary and contrary to the public interest and that good cause exists for making this rule effective earlier than 30 days after publication. In addition, since this rule merely implements cited statutory provisions, it constitutes an interpretive rule for which notice and comment rulemaking and a 30-day delayed effective date are not required by 5 U.S.C. 553.

The Nutrition Education and Training Program is listed in the Catalog of Federal Domestic Assistance under No. 10.564 and is subject to the provisions of E.O. 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V and 48 FR 29112, June 24, 1983).

This final rule does not contain any new data collection or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980.

Background

Section 19(j) of the Child Nutrition Act of 1966 (42 U.S.C. 1788) was amended by Sec. 362 of Title III of Pub. L 99-500 and Pub. L. 99-591 to change the minimum grant guaranteed to a State agency under the NET Program from $75,000 to $50,000. Section 19(j) requires that NET funds be apportioned to States based on school enrollments. Because lower minimum grants now will be provided to States with the lowest enrollments, additional funds will be available for allocation to States with higher enrollments.

List of Subjects in 7 CFR Part 227

Education, Food and Nutrition Service, Grant Programs—education, Grant Programs—health, Infants and Children, Nutrition.

Accordingly, 7 CFR Part 227 is amended as follows:

PART 227—NUTRITION EDUCATION AND TRAINING PROGRAM

1. The authority citation for Part 227 continues to read as follows:

Authority: Sec. 15, Pub. L. 95-166; 91 Stat. 1340 (42 U.S.C. 1788).

2. In § 227.5 paragraph (a) is revised to read as follows:

§ 227.5 Program funding.

(a) *Total grant.* The total grant to each State agency for each fiscal year for program costs and administrative costs shall consist of an amount equal to 50 cents per child enrolled in schools and institutions within the State during such year, but in no event shall such grant be less than $50,000: *Provided, however,* that a State's total grant shall be reduced proportionately if the State does not administer the program in nonprofit private schools and institutions. If funds appropriated for a fiscal year are insufficient to pay the amount to which each State is entitled, the amount of such grant shall be ratably reduced to the extent necessary so that the total of the amounts paid to each State does not exceed the amount of appropriated funds. Each State agency which receives funds based on all children enrolled in public and nonprofit private schools and institutions shall make the Program available to those schools and institutions. Enrollment figures shall be the latest available as certified by the Department of Education.

* * * * *

Robert E. Leard,
Administrator.
March 5, 1987.

[FR Doc. 87-5640 Filed 3-16-87; 8:45 am]
BILLING CODE 3410-30-M

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 87-012]

Tuberculosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the regulations governing the interstate movement of cattle because of tuberculosis by raising the designation of Illinois from a modified accredited area to an accredited-free State. This action is necessary because we have determined that Illinois meets the criteria for designation as an accredited-free State. The designation for any given jurisdiction can affect the marketability of cattle from that jurisdiction. While the regulations do not impose restrictions on the interstate movement of cattle not known to be affected with, or exposed to, tuberculosis from either accredited-free States or modified accredited areas, some prospective cattle buyers prefer to buy cattle from accredited-free States.

EFFECTIVE DATE: March 17, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph L. Hosker, Domestic Programs Support Staff, VS, APHIS, USDA, Room 815, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8438.

SUPPLEMENTARY INFORMATION:

Background

The interim rule, published November 21, 1986 (51 FR 42081–42082), was effective on the date of publication in the Federal Register, and comments were solicited for 60 days ending January 20, 1987. We did not receive any comments. The facts presented in the interim rule still provide a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse affect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of the State of Illinois will not cause a significant effect on marketing patterns and will not have a significant economic impact on those persons affected by this document.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 77

Animal diseases, Cattle, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS IN CATTLE

Accordingly, we are adopting as a final rule without change, the interim rule that amended 9 CFR Part 77 and that was published at 51 FR 42081–42082 on November 21, 1986.

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 12th day of March, 1987.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87–5737 Filed 3–16–87; 8:45 am]

BILLING CODE 3410–34–M

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9 CFR Part 91

[Docket No. 87–002]

Ports Designated for Exportation of Animals; Deletion of Indianapolis International Airport

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the regulations on "Inspection and Handling of Livestock for Exportation" by deleting Indianapolis International Airport from the list of ports of embarkation. This action is necessary becaue Indianapolis International Airport no longer has export inspection facilities.

EFFECTIVE DATE: March 17, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Jr., Senior Staff Veterinarian, Import-Export and Emergency Planning Staff, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 806, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436–8695.

SUPPLEMENTARY INFORMATION:

Background

We published an interim rule in the Federal Register (51 FR 41075) on November 13, 1986, and we made it effective on that date. We received no comments. The facts presented in the interim rule still provide a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a signficant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

We anticipate that the closing of the animal export inspection facility at Indianapolis International Airport will affect only one business concern. Since approved embarkation ports are available in nearby Chicago, Illinois, and Cincinnati, Ohio, there should be no significant economic impact on this entity.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local

officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock and livestock products, Transportation.

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

Accordingly, we are adopting as a final rule without change, the interim rule that amended 9 CFR Part 91 and that was published at 51 FR 41075 on November 13, 1986.

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 616; 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 12th day of March, 1987.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-5736 Filed 3-16-87; 8:45 am]

BILLING CODE 3410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 19, 20, 21, 30, 39, 40, 51, 70, 71, and 150

Licenses and Radiation Safety Requirements for Well Logging

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to specify radiation safety requirements and license requirements for the use of licensed radioactive materials in well logging. Well logging uses instruments lowered into a drilled hole to obtain information on underground rock formations, such as type of rock, porosity, density, and hydro-carbon content, to locate oil, gas, coal, and other mineral deposits. The regulation, set out in a new Part 39, consolidates radiation safety requirements for well logging into one part, establishes clearly-stated and specific radiation safety requirements, and promotes the adoption of uniform radiation safety requirements among NRC and Agreement States.

EFFECTIVE DATE: July 14, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen A. McGuire, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 443-7900.

SUPPLEMENTARY INFORMATION:

On April 8, 1985, the Nuclear Regulatory Commission published for public comment a proposed rule specifying safety requirements for the use of licensed radioactive material in well logging (50 FR 13797). Well logging uses instruments lowered into a drilled hole to obtain information on certain properties of the underground rock formations, for example, type of rock, porosity, density, and hydrocarbon content.

The purpose of establishing a new Part 39 specifically for well logging is to have in one place in the regulations the basic safety requirements for well logging. Formerly, the requirements were contained in several different parts of NRC regulations. Those requirements were often very general because they applied to many different types of licensees. The new Part 39 establishes specific requirements for well logging that supplement more general requirements contained in other parts (i.e., training requirements in Part 19 or survey requirements in Part 20).

The public comment period was originally scheduled to end on July 8, 1985. In response to a large number of requests for an extension, the comment period was extended until October 9, 1985, (August 8, 1985; 50 FR 32086). However, all comments received by December 12, 1985, were given full consideration.

Uses of Licensed Material in Well Logging

The oil and gas industry often needs to determine the types and characteristics of the underground formations in a new or existing well. Licensed materials are used to obtain information on certain properties of an underground formation, such as type of rocks, porosity, hydrocarbon content, and density. Licensed materials are also used for similar purposes in coal or mineral exploration.

In well logging, sealed radioactive sources with associated radiation detectors, known as logging tools, are lowered into a well on a wireline. The depth of the well could range from several hundred feet to greater than 30,000 feet. Information collected by the detectors is sent to the surface through the wireline and plotted on a chart as the logging tool is slowly raised from the bottom of the well. Americium-241 (typically 0.25 curie to 20 curies) and cesium-137 (typically 0.1 to 3 curies) are the radioactive materials most frequently used for this purpose.

In subsurface tracer studies, a small amount of radioactive material in liquid or gaseous form is used. After the liquid or gas tracer is injected into the well, a detector is used in the well to monitor the dispersion of the tracer material. This information will help determine certain underground characteristics such as fluid flow rate and the channeling effect. Iodine-131 (typically 5 to 20 millicuries) is the material most frequently used in subsurface tracer studies.

Other licensed materials used in well logging include cobalt-60 used in collar markers, radioactive iron used in nails, depleted uranium used in sinker bars, and iridium-192 used in sands. Collar markers use Co-60 wire (about 1 to 5 microcuries) to mark collars between two sections of casing and provide positive depth measurement. Radioactive iron nails are used to indicate the movement of cement. Sinker bars are constructed of solid depleted uranium (usually weighing 50 to 100 pounds) and are used to provide additional weight to help push a light weight logging tool through the drilling fluid, called mud by the drilling industry, down to the bottom of the well. Sands mixed with a small amount of iridium-192 are used to determine the extent of underground hydraulic fracturing.

NRC and Agreement States' Roles

Twenty-eight Agreeemnt States, including most major oil producing States, have assumed responsibility for regulating certain activities, including the use of radioactive materials in well logging, by agreements with the NRC. Each Agreement State issues licenses to persons who use radioactive material in well logging in the State.

The NRC issues licenses to persons using byproduct, source, or special nuclear material for well logging in non-Agreement States. These licenses specify the radiation safety requirements applicable to well logging that the licensee must follow. The NRC had, as of March 1986, 171 licensees authorized to use byproduct, source, or special nuclear radioactive material in well logging. The Agreement States have

approximately 400 licensees involved in well logging.

Well logging licensees from one State frequently perform well logging jobs in other States. To avoid duplication of licensing effort, NRC permits, under reciprocity, Agreement State licensees to operate in non-Agreement States according to the conditions of the license issued by their home State. Reciprocity also applies to licensees of the NRC which wish to operate in and among Agreement States. Section 274(d) of the Atomic Energy Act of 1954, as amended, requires compatibility between NRC and Agreement State regulations with respect to materials within a State covered by an agreement. For well logging this compatibility is important to permit licensees to conduct their activities in various States while maintaining a consistent and effective level of protection necessary to ensure public health and safety.

NRC's Current Regulatory Practices

Except for requirements concerning the abandonment of irretrievable well logging sources set forth in 10 CFR 30.56 and 70.60, current NRC regulations do not provide radiation safety requirements specific to the use of licensed material in well logging. General safety requirements which apply to well logging are contained in 10 CFR Parts 20, 30, 40, and 70. At present, NRC reviews a licensee's specific safety program as part of the license application, and incorporates it into the license as license conditions.

Problems With the Current Practice

A major problem with the current practice is that radiation safety requirements applicable to the industry are specified as license conditions on a case-by-case basis. They are not currently delineated in uniform regulations that are applicable to all licensees. This requires duplication of NRC staff effort and may result in discrepancies in requirements among specific licenses issued by NRC and the Agreement States. Problems in the consistent and uniform application of these requirements could become a greater concern because, under the NRC's program for the decentralization of material licensing actions, well logging licenses are issued by the five NRC Regional Offices instead of NRC Headquarters.

Though there are about 90,000 well logging operations each year, the probability of an accident is small. Nonetheless, accidents have occurred and additional safety requirements are needed to reduce the risk of radioactive contamination and radiation exposure even further. The NRC believes that certain additional safety requirements should reduce radiation exposures and thereby improve public safety.

Five incidents occurred between August 1982 and April 1986 involving radioactive sources used in well logging. Three involved the rupture of sources in uncontrolled workshop environments by workers performing machining or drilling operations. Two incidents involved the rupture of sources in well holes during logging tool recovery operations. The total cost associated with the cleanup or radioactive contamination from these incidents is estimated to be in excess of $1.5 million.

Actions Taken By Agreement States

Recognizing the need for comprehensive and consistent radiation safety standards, the Conference of Radiation Control Program Directors established a task force in 1974 to develop standards for well logging. The task force was composed of representatives from States, industry, and Federal agencies, including NRC. By 1981, a set of model regulations was proposed to the Conference by the task force. In keeping with previous practices of the organization, the Conference adopted the well logging requirements as Part W of the "Suggested State Regulations for Control of Radiation." Four Agreement States (Arkansas, Kentucky, Oregon, and Texas) have already adopted Part W requirements as State regulations without significant changes.

NRC's Proposed Approach

The NRC is amending its regulations to include specific radiation safety requirements for well logging. These requirements are included in 10 CFR Part 39, a new part dedicated exclusively to well logging.

The rule is needed for the following reasons:

(1) The rule provides comprehensive and consistent regulations applicable to well logging. Formerly, NRC regulations did not provide specific requirements; specific requirements pertaining to well logging were imposed as license conditions.

(2) The rule promotes uniformity and consistency between NRC and Agreement State regulations. Compatibility between NRC and Agreement State regulations is required by the Atomic Energy Act and is important for well logging because many companies operate in both Agreement and non-Agreement States. Agreement States will need to adopt requirements similar to Part 39 in order to achieve compatible regulations.

(3) The rule includes safety requirements designed to reduce the likelihood of accidents involving the rupture of radioactive sources and the spread of radioactive contamination. Accidents have resulted from improperly removing a stuck source from a well logging device or retrieving a well logging device lodged in a well.

(4) The rule also includes safety requirements involving the use of radioactive collar markers, uranium sinker bars, and of a sealed source in a well without surface casing.

The new part specifies various safety requirements. It parallels existing Part 34 which is dedicated exclusively to radiographic operations. In addition, the new Part 39 includes the new SI units, for example becquerels, in parentheses for information. However, the NRC still requires that records be kept in the traditional units—rems, rads, roentgens, and curies—in accordance with the requirements of Part 20.

Public Comments

One hundred public comments on the proposed rule were received. Many of the commenters strongly opposed the rule because they believed that it would make impractical logging in wells without casing for protecting fresh water aquifers. These commenters said that if they were forced to use surface casing to isolate the hole from fresh water aquifers it would greatly increase the cost of the holes and severely diminish the effectiveness of the log. This would have caused considerable hardship in the mineral exploration industry, especially exploration for coal.

The intent of the rule was not to require surface casing to protect aquifers. The intent was that logging in uncased wells should be performed only if the licensee follows an approved procedure for reducing the chance of the source becoming lodged in the well. The final version of the rule has been reworded to clarify the actual intent of the regulation and, as written, should not be a burden on the mineral logging industry because it can be met by using procedures that are practical and inexpensive to follow. The procedures are discussed in more detail later on.

The more significant comments and their resolution are discussed in detail below, arranged according to the specific section in the rule. In addition to the comments discussed, certain minor wording changes were made in the rule as a result of public comments and as a result of NRC staff reconsideration during discussions on resolution of comments. Because of their minor

nature, these changes are not specifically discussed here.

General comments

Comment: A few commenters stated that the proposed Part 39 was much more detailed and went far beyond Part W of the Suggested State Regulations published by the Conference of Radiation Control Program Directors. (Specific areas are discussed below.) They stated that Part W should be adopted instead of the proposed Part 39 because Part W is a consensus standard adopted by many States, has withstood challenges, and is understood by the industry and regulators.

Response: The NRC agrees that proposed Part 39 exceeds the scope of Part W. The NRC believes that Part 39 improves upon Part W by adding additional requirements to protect public and employee health and safety. However, some changes made in response to public comments narrow the differences between Part W and Part 39. Comments on specific areas are discussed below.

Comment: Several commenters said that NRC underestimated the cost of complying with the proposed Part 39, especially with regard to the costs of complying with § 39.51, "Use of a sealed source in a well without casing."

Response: The proposed rule estimated that the cost for an average licensee to comply with Part 39 requirements would be $7,400/year and the cost to the entire industry would be $1,326,000/year. The industrywide costs of complying with the proposed § 39.51 were estimated to be minimal ($4,000/yr). However, those estimates included no costs for requirements considered to be already in existence, for example personnel monitoring requirements, survey and survey meter requirements, and requirements concerning lodged and irretrievable sources. Thus, the costs of Part 39 were not claimed to represent the complete costs of radiation protection in well logging.

As part of the final rulemaking the total costs of compliance with Part 39 were reevaluated. The new estimate included the costs of all sections of Part 39 even if the requirements were previously required by other parts of the regulations. In addition, the previous estimates substantially underestimated the number of sealed sources in use, the number of logging supervisors and assistants, the number of logging operations, and the number of logging companies. Thus, the costs represent essentially the entire costs of radiation protection.

The cost of compliance with Part 39 was estimated to be roughly $155,000/year for an average licensee and roughly $47,000,000/year for the industry. Most of the cost is associated with retrieval efforts for lodged sources and abandonment of the sources if they cannot be retrieved. Other areas of substantial cost are: Radiation surveys, leak testing, survey meter calibration, training, and recordkeeping.

However, Part 39 appears to cause virtually no change in existing costs. The Part 39 requirements are essentially identical to the existing requirements currently imposed on NRC licensees by regulations and license conditions. For some licensees there will be minor increases in requirements, for example additional training, and for other licensees minor decreases, for example reduced frequency of physical inventories. Even in those States that have adopted Part W, the States have imposed many license conditions that exceed Part W standards. Thus, the costs to licensees in those States are nearly identical to the costs imposed on licensees in States that have not adopted Part W. The Regulatory Analysis of costs found no cases of substantial new costs, and, overall, the minor increases should be balanced by minor decreases, for no net change.

In particular, § 39.51, requiring procedures for logging in wells without surface casing to protect fresh water aquifers, should be implemented at minimal cost to the licensee. The comments stating that the costs of § 39.51 were greatly underestimated were based on a misunderstanding of the intent of the rule. This is discussed in more detail under the section dealing with comments on § 39.51.

Single copies of the Regulatory Analysis containing the new cost estimates may be obtained without charge, subject to availability, upon written request from NRC Publication Services Section, USNRC, Washington, DC 20555.

Comment: Many commenters thought that mineral logging should not be included in Part 39 because of the great difference between it and oil and gas logging. For example, mineral logging uses smaller sources, does not require removing the source from the tool in the field, does not use tracers, operates at lesser depths where temperatures and pressures are lower, and generally operates in uncased wells.

Response: The NRC has not accepted the suggestion to delete mineral logging from Part 39 because one of the purposes of the rule is to codify in one place the safety requirements for well-logging. While it would be possible to have one sub-part for mineral logging and another for oil and gas logging, the health and safety requirements being established are equally applicable to both types of well logging. Both types of logging involve the raising and lowering of sealed sources in a logging tool attached to a wireline and require transportation of these sources to a temporary jobsite. In each case U.S. Department of Transportation regulations must be met. In both cases, sealed sources can have high radiation dose rates and may present a major hazard if ruptured. Sources in each case may become lodged in wells and ultimately may need to be abandoned. In both cases, radiation surveys are needed and personnel dosimetry is appropriate. Therefore, the NRC has considered carefully the special conditions found in mineral logging and has accounted for the conditions applicable to it where appropriate.

Comment: Several commenters questioned whether State regulations modeled after Part W would be found compatible with the final Part 39. If not, they believed the States adopting Part W would be required to amend their regulations.

Response: Most sections of the new rule will be items of compatibility. The final decision on which sections would be items of compatibility has not yet been made because the determination is not made until after the rule has been published in final form, but the NRC expects that all sections except §§ 39.1, 39.5, 39.8, 39.11, 39.13, 39.17, 39.47, 39.73, 39.91, and 39.101 will be items of compatibility. The NRC only requires enforcement authority in Agreement States. Thus, the civil or criminal penalties for violating a requirement in an Agreement State may not be the same as the penalties imposed by the NRC or the United States. Section 39.41 may require adoption verbatim to avoid interference with interstate commerce and because it is based on a national standard. Each Agreement State will have three years after the effective date of Part 39 to adopt compatible regulations.

Section 39.1 Purpose and scope.

Comment: Three commenters said Part 39 should be clarified to exclude sealed sources used as an auxiliary to well logging, but not lowered into wells, such as densiometers.

Response: The clarification was made. It was never intended that sources not used directly in well logging be covered by the regulations.

Section 39.2 Definitions.

Comment: Several commenters said the definition of "surface casing" is

appropriate for oil and gas drilling but not consistent with usage in mineral exploration drilling where surface casing is used to prevent unconsolidated material from falling in the hole rather than protect fresh water acquifers.

Response: "Surface casing" as defined in § 39.2 is different from the meaning of the term as generally used in mineral exploration drilling. However, by defining the term "surface casing for protecting fresh water aquifers," the meaning of the regulations should be clear. Surface casing for protecting fresh water aquifers usually is used in oil and gas drilling, to prevent oil from contaminating fresh water aquifers, but rarely is used in coal or mineral exploration because little danger of contamination of the fresh water aquifer exists.

Comment: A few commenters suggested deleting "radioactive iron nails" from the definitions of "radioactive marker" and "well logging operations" because they are not used in well logging, in depth determination, or for direction orientation.

Response: "Radioactive nails" and "radioactive markers" were included to ensure that they contain only exempt quantities of radioactive materials as proposed in § 39.47, "Radioactive markers." There was no intent to require that radioactive nails or radioactive markers be subject to most other requirements of Part 39. Therefore, § 39.47 has been revised accordingly.

Section 39.13 Specific licenses for well logging.

This section describes the information that an applicant must submit to the NRC to obtain a license.

Comment: One comment objected to requiring that a copy of the written test (that would be given to logging supervisors and logging assistants) be submitted with the license application. The commenter opined that the proposed requirement would reduce the licensee's flexibility.

Response: The section was changed to delete the specific requirement for submission of the written tests as part of the license application. The modification is now consistent with the requirements for industrial radiography as set forth in § 34.11(b). However, the Commission, pursuant to § 39.13(b) (4) and (5), may require an applicant to submit a copy of a sample test of questions and answers or an outline of the test questions and answers.

Comment: A commenter objected to the requirement that the written operating and emergency procedures must be approved because this would mean that even minor changes in the procedures could not be made without submitting an application to amend the license.

Response: The NRC has changed the requirement to allow the option of submitting either the procedures in their entirety or else an outline of the procedures that includes the radiation safety aspect of the procedures. The Commission's issuance of the license constitutes its approval of what was submitted in the license application. If a licensee desires to change the procedures or the outline submitted pursuant to § 39.13, a license amendment will be required.

Comment: Many commenters objected to the requirement for annual inspections of the job performance of each logging supervisor and assistant by the licensee. Commenters said formal annual inspections were necessary because of the extensive initial training and the periodic safety reviews given to logging supervisors and assistants. Commenters also said that the inspections would be extremely burdensome because most logging jobs are in remote areas or offshore and do not occur during the normal 8 to 5 workday. A three-year interval was suggested.

Response: The NRC depends on company management to assure that proper radiation safety procedures are followed. The NRC believes that management should verify at least annually that procedures are properly followed. However, the NRC has dropped the requirement to inspect logging assistants because they are under the constant personal supervision of a logging supervisor while handling radioactive sources.

Section 39.15 Agreement with well owner or operator.

Comment: Many comments were received on this section. Commenters noted that the requirement was unclear. They were confused about the content of the written agreements and the party responsible for the retrieval and abandonment of a sealed source.

A number of mineral loggers stated that they assumed full responsibility for retrieval efforts, decontamination efforts in the event of a rupture source, and abandonment procedures. They asked if this was in conflict with the regulation.

Response: The licensee is responsible for assuring compliance with the regulations. Either the licensee or the well owner or operator may perform the tasks specified in § 39.15. However, a non-licensee's failure to comply with § 39.15 will not obviate the licensee's responsibility. The purpose of the agreement is to specify whether the licensee or the well owner or operator will perform the retrieval and abandonment and to provide some assurance that the well owner or operator will permit the licensee to meet its responsibilities.

The wording of the section has been changed to permit the parties to identify who will perform the different functions associated with retrieval and abandonment. The modified language more closely follows that found in § 30.56, "Well logging operations using seal sources."

Comment: Several commenters did not want the NRC to specify the exact wording of an agreement. Some commenters were concerned about compatibility with Agreement State regulations, others about whether their existing contracts would continue to be acceptable, and others about excessive length in the wording of the agreement. Commenters were concerned that use of the word "specify" meant that the exact same words in the regulation had to be used.

Response: The exact words in the regulation do not have to be used. The word "specify" has been removed to reduce confusion.

The agreements can be quite short. For example, in situations in which the well owner or operator would perform retrieval and abandonment efforts, the agreement could read, "If a logging tool containing a sealed radioactive source becomes lodged in a well, (name of well owner or operator) agrees to meet all requirements in § 39.15(a) of NRC regulations concerning retrieval and, if necessary, abandonment of lodged sources and to permit (name of licensee) to monitor the recovery efforts." However, the licensee is ultimately responsible for assuring compliance with § 39.15(a).

If the licensee would perform retrieval and abandonment efforts, the agreement could read, "If a logging tool containing a sealed radioactive source becomes lodged in a well, (name of well owner or operator) agrees to permit (name of licensee) to meet all requirements in § 39.15(a) of NRC regulations concerning retrieval and, if necessary, abandonment of lodged sources."

Agreements also could split responsibilities between the licensee and the well owner or operator. For example, the agreement could state that one party would perform retrieval efforts and the other party would meet the abandonment requirements.

Comment: A few commenters said that if the well owner and the logging company are the same company there

should be no need for a written agreement.

Response: The NRC agrees and an exception has been added to § 39.15 to address the situation.

Comment: To avoid drilling into an abandoned logging source, a half-dozen commenters suggested that it should be acceptable to use "a whipstock or other mechanical device" rather than "a whipstock or other deflection device."

Response: The suggestion was adopted.

Comment: One comment asked whether a blanket agreement with a well owner or operator who was a frequent customer would be acceptable for meeting the regulation.

Response: A blanket agreement would be acceptable.

Comment: One comment stated that the requirement is not clear if a mining company's hole is on Federal land.

Response: The agreement usually would be between the logging company and the mining company, as the well operator. The Federal government generally would not be a party to the agreement because it is not the well owner or operator. In this case, the Federal government is the land owner, and the land owner need not be a party to the agreement.

Section 39.31 Labels, security, and transportation precautions.

Comment: Several commenters said the section should be revised to clarify those items requiring labels.

Response: The suggestion was adopted and implemented.

Section 39.33 Radiation detection instruments.

Comment: Many commenters, particularly mineral logging companies and cement pumping companies that use tracers, stated that there is no need for survey meters with a range up to 100 mR/hr for their operations and that replacing otherwise good meters would be an unnecessary expense. Commenters suggested that ranges to 20 mR/hr or 50 mR/hr would be adequate.

Response: The NRC has reviewed survey requirements for well logging and concluded that a survey instrument with a range of 0.1 to 50 mR/hr is adequate for the general use survey instrument required at field stations and temporary job sites. The regulation therefore has been changed to specify a range of 0.1 to 50 mR/hr instead of 0.1 to 100 mR/hr.

The 50-mR/hr value was selected, in part, because logging source packages and tools can, in general, be transported using "Radioactive Yellow II" labels pursuant to Department of Transportation regulations. The maximum allowable surface dose rate on a package bearing a "Radioactive II" label is 50 mR/hr. A 50 mR/hr instrument is adequate for surveys of surface radiation levels.

Paragraph 39.67 (b) requires radiation surveys before transportation of the position occupied by each individual in the vehicle and the exterior of the vehicle. In general, the readings will not exceed a few mR/hr if sources are properly packaged and secured. Thus, a 50 mR/hr survey instrument is adequate for these surveys.

Paragraphs 39.67 (c), (d) and (e) require the detection of contamination in different situations. The purpose of these surveys is to determine whether contamination is present. The low end of the survey instrument range is appropriate for these measurements. It is possible, although unlikely, that dose rates could exceed 50 mR/hr. In such a case, the logging supervisor should obtain assistance. The logging supervisor should not attempt to map out dose rates in highly contaminated areas because there is no need for such a map and making the map would result in unnecessary exposure. The necessary measurements can be done with a survey instrument that reads no more than 50 mR/hr. This type of survey meter can be used to locate all highly contaminated areas.

It was suggested that a 100 mR/hr survey meter could be useful for measuring high radiation areas, defined as areas in which a person, if continually present, could receive a dose of 100 mrem in any one hour. In general, there is no reason to measure high radiation areas during well logging. First, high radiation areas will not normally exist in well logging because the dose rates are low enough so that no person would receive a 100 mrem dose during the time the source is unshielded above ground. Typically it takes only a minute to put a logging tool in the hole. Second, in the unusual event that a source could not be shielded or put in the ground, a perfectly adequate survey could be made with a 50 mR/hr survey meter because a precise measurement of the location of the 100 mR/hr dose rate is neither necessary or appropriate. The high radiation area can be located (1) by using the 50 mR/hr dose rate location as a substitute, (2) by extrapolating from the 50 mR/hr location to the 100 mR/hr location, or (3) by calculations. Note that estimates rather than direct measurements of dose rates are recommended by NRC for gamma radiography where high radiation areas normally do exist and must be posted. Regulatory Guide 10.6 (Appendix B, Section C) states, "it is neither necessary nor desirable for a physical survey to be made to confirm the radiation level at the boundary of the high radiation area since such a survey could lead to unnecessary exposure of personnel."

Comment: A number of commenters said that the lifetime of survey instruments is 10 or 12 years, not 5, as stated by NRC. Therefore commenters said the rule, as proposed, would have been more expensive than NRC assured because many good instruments would have to be discarded before the end of their natural lifetime.

Response: The NRC agrees that the lifetime of survey instruments is generally about 10 or 12 years, but is retaining the 5-year phase-in period from the effective date of the regulation. Since the upper range has been changed to 50 mR/hr most survey meters in use already meet the requirement. Thus the cost impact of the rule will be small.

Comment: The suggestion was made by a commenter that the routine use radiation survey instruments required in paragraph (a) should be capable of detecting both betas and gamma radiation because they have greater sensitivity for detecting contamination than instruments that detect gamma rays only.

Response: The suggestion was adopted.

Comment: There was some uncertainty about what type survey meters should be used for detecting contamination.

Response: The intent is that licensees should have or be able to quickly obtain instruments that can detect low levels of radiation or contamination if a source is ruptured. While it is difficult to specify how quickly the instrument should be obtained, good practice dictates that the instrument should be obtained within one day except when special, unusual, or unexpected circumstances complicate delivery of the instrument. In the case of an americium-241 source, the instrument of choice would be highly sensitive to 60 kev gamma rays such as a crystal scintillation detector. Neutron detectors would not be useful because of low sensitivities. Alpha detectors would not be as effective as gamma detectors because alpha particles would be shielded by drilling mud. Paragraph (b) was revised to clarify the intent.

Comment: It was stated by a few commenters that survey meters should not be required at temporary job sites where sealed sources are used because the logging tool, which is much more sensitive than a survey meter, can be used to detect contamination. Moreover, a survey meter could be brought from a

field station if one was needed. Commenters noted that Part W does not require a survey meter at a temporary job site.

Response: The NRC did not adopt this suggestion because the logging tool may become lodged in the well or damaged and will not be available or operable. In addition, if a sealed source is leaking or ruptured, the tool probably will be contaminated; in such cases it may not be possible or desirable to remove the source from the tool. In this situation, a survey meter can be used to locate highly contaminated areas so that further spreading of contamination can be reduced. For these reasons, the NRC has decided to adopt a stricter requirement than the one found in Part W.

Section 39.35 Leak testing of sealed sources.

Comment: Several commenters noted that a leak test is composed of two parts—a wipe and an analysis or assay of the wipe. Commenters opined that the intent of the proposed rule was that only the analysis or assay need be performed by a person specifically authorized to do so.

Response: The commenters are correct and the regulation has been clarified. In addition, the NRC has added a requirement in § 39.13(f) that the licensee must perform the wipe with a leak test kit approved by the NRC.

Comment: Commenters recommended that the NRC notification of leaking sources be required within 30 days rather than within 5 days as proposed. Commenters could not see any reason for great urgency in the report because sources with positive leak tests are taken out of service until the test results can be obtained. Commenters said the 5-day requirement did not allow them to confirm that test results were valid. Commenters said that reports made within 5 days would not be complete.

Response: The NRC selected 5 days because it is sufficient time to perform a retest. A retest is generally desirable because most positive leak test results are found to be in error. The report must be made within 5 days because decontamination after a leak is easiest if done as soon as possible after the leak occurred. Therefore the NRC must receive the information quickly, in order to ensure proper decontamination. In addition, the NRC will use the information to determine the necessity for an inspection.

The report may be made by telephone or in writing. To meet the 5-day requirement, letters must be mailed within 5 days after receiving the test results.

The NRC recognizes that contamination surveys and corrective actions may not be finished and thus the report may not be complete. This is perfectly acceptable. If the NRC wants additional information, it can and will request that information.

Comment: Several commenters stated that leak-testing every six months is too frequent and unnecessary because leaking sources are so rare.

Response: It is true that leaking sources are rare. For example, for the 5-year period from June 1980 to June 1985, NRC's well logging licensees reported only five leaking sources—all cesium-137 sources. None caused significant contamination problems. Some of these sources reported as leaking may have been insufficiently decontaminated after manufacture, but others had imperfect welds. The NRC believes, however, that the six-month interval is appropriate because the cost of leak tests is not significant whereas the cost of a cleanup from a leaking source could be substantial. In addition, a serious leak has the potential to produce unnecessary exposure to radiation.

Comment: A few commenters wanted to know whether the NRC plans to approve persons or companies authorized by the NRC to analyze leak test wipes. In addition, the commenters wanted to know how they could find out if the companies they use are approved.

Response: The NRC and Agreement States currently approve companies authorized to perform analyses of leak test wipes. If there is a question about whether a company has approval to analyze wipes, it is possible to telephone the NRC or appropriate State agency to confirm that the company has been approved.

Section 39.37 Physical inventory.

Comment: One commenter noted that this section requires a duplication of records because both leak-testing and inventory must be done at 6-month intervals and both require a separate set of records. The commenter said that the leak test automatically provides an inventory check.

Response: A statement has been added saying that the leak test records may be combined with physical inventory records. This can be accomplished by including all information necessary for the physical inventory on the leak test record form since a leak test cannot be made unless the source has been located.

Section 39.39 Records of material use.

Comment: A few commenters questioned why records of material use had to include the identity of both the logging supervisor and logging assistants. They saw no reason why the logging assistants needed to be listed and said it could create confusion about who was responsible.

Response: Section 39.39(a)(3) was reworded to clarify that responsibility for the licensed material rests with the logging supervisor. However, both the supervisor and assistants must be listed on the record so that the NRC can determine who was present at each logging job. This allows the NRC to check whether the people at the site have completed the training required by § 39.61.

Section 3941 Design and performance criteria for sealed sources.

This section contains performance criteria for sealed sources used in well logging. The performance criteria in § 39.41 are different from those in §§ 71.75 and 71.77 for "special form" radioactive material. Thus, a well logging sealed source may not be transported as "special form" material unless it also meets the transportation performance criteria in §§ 71.75 and 71.77. As a practical matter, however, sealed sources meeting the performance criteria in § 39.41 will generally be able to meet the requirements in §§ 71.75 and 71.77. in addition, U.S. Department of Transportation regulations (49 CFR 173.476) require each shipper of a special form source to maintain on file a safety analysis documenting the tests demonstrating that the source meets the special form requirements.

Comment: A number of commenters said that the requirement that sources contain "licensed material whose chemical and physical forms are as insoluble and non-dispersible as practical" is too vague and that they were unable to determine whether their existing sources met the requirement or not.

Response: The NRC maintains a list of acceptable approved models of sealed sources. A licensee can telephone the NRC's regional licensing staffs or headquarters to find out if a particular model of a sealed source has been approved. Agreement States also have the list and may be telephoned. The NRC licensing staff compares the models listed as approved with the models listed in the license application. Licenses generally will be issued only for approved models. Thus, any model now listed on a license should meet this requirement, with the possible exception of a few very old sources.

In particular, cesium chloride sources do not meet the solubility standard in the regulation. Americium oxide sources

meet the solubility and non-dispersibility standards.

Comment: Individual pressure testing of sources is not necessary nor required in the ANSI standard on sealed sources. It should not be required.

Response: Prototype pressure testing has been substituted in place of individual pressure testing. The certificate to demonstrate compliance is no longer required because the NRC's list of approved sources meeting the requirements is adequate to determine compliance.

Comment: Some commenters noted that the test requirements were somewhat general and that acceptable methods of performing the tests and interpreting the results were not included in the proposed rule.

Response: Specific methods of performing the tests and interpreting the results are not included in the regulation because there are a number of valid ways to perform the tests and interpret the results. Useful information on the tests is included in industry standard ANSI N542, "Sealed Radioactive Sources Classification," published by the National Bureau of Standards (NBS Handbook 126) in 1978. (Available from the U.S. Government Printing Office, Washington, DC 20402—stock number SN003–003–01903–8.) The NRC generally accepts the standard as describing acceptable methods to meet the criteria in the regulation, but is willing to consider other methods on a case-by-case basis.

Comment: Two commenters thought the puncture test (a 1 meter drop of a 1 gram hammer with a 0.3 cm pin) was not meaningful for sources that also had to pass the impact test (a 1 meter drop of a 5 kg hammer with a 2.5 cm diameter).

Response: The puncture test is meaningful because the small diameter pin can hit small thin windows in sources whereas the windows are protected by sidewalls during an impact test.

Section 39.43 Inspection, maintenance, and opening of a source or source holder.

Comment: The comment was made that routine inspection and maintenance, for example, changing o-rings or moving a source from one holder to another, should not require written procedures because they are so simple.

Response: There is no requirement for a written procedure for changing o-rings if the source is removed. The requirement applies to only the relatively uncommon case in which the maintenance, even if it is simple, is done while the source is in the equipment because the sources have high surface radiation dose rates and touching them can cause significant exposures. The NRC reviews these procedures when submitted in the initial application or in a request for a license amendment. The review is designed to ensure that proper safety precautions are included in procedures involving source handling. The NRC believes these procedures should be simple and inexpensive to write.

Comment: A few commenters suggested that this section should state specifically that a record is not required of the visual inspection of source holders, logging tools, and source handling tools performed before each use.

Response: Defects should be noted so they may be fixed. The section has been revised to include this record. There is no need to maintain records of inspections that do not disclose defects.

Comment: A few commenters thought the description of equipment for which written maintenance procedures were required was too broad and too vague.

Response: Written maintenance procedures are required only if the maintenance will be done while the sealed source is in the equipment. The rule has been modified accordingly.

Section 39.45 Subsurface tracer studies.

Comment: Several commenters suggested amending the section so that for small quantities of material, such as 10 millicuries of iodine-131 or iridium-192, protective clothing may not be needed.

Response: The Commission agrees that for routine tracer use, for example normal handling of 10 millicuries of iodine-131 or iridium-192, only protective gloves are needed. The section has been amended.

Comment: Several commenters objected to prohibiting the injection of radioactive tracers into fresh water aquifers. The U.S. Geological Survey said this would interfere with major missions of the agency.

Response: The section does not actually prohibit the injection of tracers into fresh water aquifers. It merely states that Commission approval is needed to do so. The Commission must assure that the tracers are used properly (short half-life radionuclides, small quantitites, and far enough from drinking water wells) in order to avoid contamination of drinking water.

Section 39.51 Use of a sealed source in a well without surface casing.

Comment: This section received far more comments (over 50) and much stronger objections than any other section. The section was viewed as making impractical the logging of uncased holes. The coal and mineral logging industries believed the regulation would increase enormously the cost of their operations and decrease logging effectiveness because the use of casing would block the radiation emanating from the source.

Response: The proposed rule did not express the actual intent of the proposed requirement and was misleading. There was no intention to require surface casing for protecting aquifers in mineral logging. Rather the rule was designed to prevent a source from becoming stuck in an uncased hole, which might lead to a source becoming irretrievable or rupturing. The NRC intended that the licensee adopt some simple and inexpensive procedures to assure that the hole is open and reduce the possibility of the logging tool becoming stuck downhole. Thus the procedures are intended to avoid situations that have a potential of causing exposure of the public to radiation. Mineral logging sources have become lodged and have ruptured during recovery efforts. Among the procedures that are acceptable to the Commission to meet the requirement in § 39.51 are: (1) Obtaining specific knowledge of borehole conditions, for example, from the drilling team, (2) running a caliper log to show the hole is open, (3) running in a tool without a radioactive source to show it can be freely removed, or (4) placing a temporary casing in sections of the hole giving problems. Other procedures may also be acceptable.

A number of mineral logging companies were asked whether these procedures would be reasonably simple and inexpensive, and they agreed with the NRC characterization. Therefore, the NRC has decided to require these procedures because they would not burden industry and would reduce hazards from licensed material.

Section 39.61 Training.

Comment: Proposed § 39.61 drew strong opposition. Many commenters objected to the proposed forty-hour safety training requirement for logging supervisors as being excessive. They generally suggested that training periods from 16 to 24 hours are adequate. Other commenters objected to any specification of hours in the regulation because the number of hours should be decided on a case-by-case basis in licensing or should remain flexible to take into account the capability of the individual being trained.

Response: The NRC agrees that the number of hours of training should not

be specified in the regulations and has been deleted. A regulatory guide will be prepared recommending about 24 hours of initial training to meet § 39.61(a)(1) for people without previous logging experience. Some additional training may be needed to meet the other training requirements in § 39.61(a). Specific licensee proposals in license applications will be reviewed on a case-by-case basis to determine compliance with regulations.

Comment: Many commenters objected to the proposed requirement for annual retraining under the belief that retraining required the licensee to conduct initial training annually and retest individuals after the retraining.

Response: To clarify the intent of the requirement, the "retraining" was deleted and "safety review" was substituted. The NRC does not expect the safety review to take more than a couple of hours per year. It may be scheduled once during a calendar year or throughout the year as the need arises. The training may be undertaken separately or included in discussions of radiation safety at periodic employee meetings. It does not require testing after the safety reviews.

Comment: Several commenters objected to supplying copies of licensee's operating and emergency procedures to logging supervisor trainees and assistant trainees because the procedures often are very extensive.

Response: The copies of procedures that must be given during training are limited to the operating and emergency procedures listed in § 39.63 and should not be excessive.

Comment: Many commenters objected to the regulation specifying that 3 months of on-the-job training is necessary before satisfying the qualifications to become a logging supervisor. Mineral logging companies reasoned that their operations were simple and present, at worst, a minor hazard that 3 months is far longer than necessary for on-the-job training. These companies stated that the regulation would be extremely expensive and burdensome because they generally use only a single person to perform the logging.

Other commenters questioned whether the length of on-the-job training should be included in the regulations. Some stated that there could be so much variation in their usage of tracers that any fixed length of time might not be enough or might be excessive depending on the workload. Some commenters stated the company is ultimately responsible for safety and consequently it should have the authority and responsibility of deciding when someone had adequate on-the-job training.

Response: The length of on-the-job training has been deleted from the regulations. Instead the license application will describe the applicant's on-the-job training program. A regulatory guide will recommend 3 months for oil and gas logging and 1 month for mineral logging when relatively low activity sources are used and the source is not routinely removed from the logging tool. These recommended periods assume no previous experience. Employees with previous experience could be permitted to have less on-the-job training if they can demonstrate competence using the licensee's equipment and procedures. On-the-job training periods with tracers may be specified in terms of number of operations because there is so much variation in how often they are performed.

Comment: Several commenters objected to providing copies of NRC regulations during logging supervisor training.

Response: The regulation has been modified and now requires the licensee to provide only Parts 19, 20, and 39. The NRC has determined that knowledge and access to the information in these parts are vital to assuring the protection of public and employee health and safety.

Comment: Some commenters objected to instructing logging assistants in the use of tracer material because the companies do not use tracers.

Response: The regulation was changed by adding "as appropriate for job responsibilities." If the licensee will not permit the logging assistant to perform certain tasks, the licensee need not instruct the logging assistant in those tasks.

Comment: A commenter asked how he could obtain information on case histories of well logging accidents in order to include it in training as required by the regulations.

Response: The NRC plans to publish a review of accident case histories for well loggers on or about September 1987. A copy will be sent to each well logging licensee. A complete training manual including information on accident case histories as well as information on the other subjects required in § 39.61(e) is scheduled for publication in 1988.

Section 39.65 Personnel monitoring.

Comment: Several commenters stated that the section is redundant with the requirements in Part 20 and should therefore be deleted.

Response: The section was not deleted. The section represents an interpretation of the Part 20 requirements applied to the specific case of well logging and also represents a codification of standard licensing practices. The requirements are considered appropriate because well loggers working in the field normally use unshielded radioactive materials that can deliver significant radiation doses. Also radiation dose data from 1979 (see NRC report NUREG–0714) [1] show that well loggers are among the workers with the highest average measurable doses, the highest average individual doses, and the highest collective doses.

Section 39.69 Radioactive contamination control.

Comment: A commenter stated that the licensee may only make an offer to monitor recovery operations because the well owner or operator might not allow the licensee to be present.

Response: Section 39.15(a) was modified to include monitoring during recovery operations in the written agreement between the logging company and the well owner or operator.

Comment: A commenter stated that decontamination of a well was too vague because no residual contamination limits were given. The commenter stated that this has led to unreasonable and inconsistent requirements.

Response: The commenter is correct that NRC regulations do not contain criteria for acceptable levels of residual contamination in soil. It is expected that normally licensees will clean up contamination to non-detectable levels as measured using appropriate instrumentation. In cases where it is not practical to remove all detectable contamination, the NRC staff will consider specific requests for approval of release of sites, equipment, or facilities with residual contamination. In evaluating such request, the staff will consider whether all practical efforts have been made to remove the contamination, and whether the residual levels are low enough such that protection of the public health and safety can be assured following release for unrestricted use.

[1] Copies of NUREG–0714 may be purchased through the U.S. Government Printing Office by calling (202) 275–2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for inspection and/or copying for a fee in the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Although surface contamination levels are not found in the regulations, recommended levels may be found in "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of Licenses for Byproduct, Source, or Special Nuclear Material," July 1982. This may be obtained by writing, Director, Division of Fuel Cycle and Material Safety, Office of Nuclear Material Safety and Safeguards, USNRC, Washington, DC 20555. The same values are also found in Regulatory Guide 1.86, "Termination of Operating Licenses for Nuclear Reactors." This guide may be purchased from the Government Printing Office, telephone (202) 275–2060.

Section 39.71 Security.

Comment: A commenter stated that the requirement to maintain surveillance over the restricted area was not possible if the source became lodged in a well and the logging supervisor had to leave to obtain assistance. The commenter also noted that the requirement would prevent sources from being left for an extended time while locked in a truck.

Response: If the source is lodged in a well, no restricted area will exist. To make that clear, the surveillance requirement was deleted in situations in which the source in below ground. Similarly, the requirement was deleted for sources in shipping containers. The rule was changed accordingly.

Section 39.73 Documents and records required at field stations.

Comment: A commenter recommended that the rule specify which regulations must be kept on file at the field station.

Response: This was done. Parts 19, 20, and 39 are specified.

Comment: A recommendation was made that training records should not be maintained at the field station if those records were available at corporate headquarters.

Response: The NRC wants training records available at field stations to facilitate inspections. The recommendation was not adopted.

Section 39.75 Documents and records required at temporary jobsites.

Comment: Several commenters remarked that keeping a copy of the licensee's entire set of operating and emergency procedures at temporary jobsites would be very burdensome because the procedures are voluminous. In addition, it was noted that many topics are inappropriate for use at a temporary jobsite.

Response: In response to the comment, § 39.75 has been modified. It now only requires the licensee to keep those procedures listed in § 39.63 at the temporary jobsite.

Comment: Several commenters suggested that it was unnecessary to maintain a copy of the license at the temporary jobsite unless the licensee is working under reciprocity.

Response: The recommendation was adopted. The license is required at the temporary jobsite only when an Agreement State licensee is working under reciprocity.

Section 39.77 Notification of incidents; abandonment procedures for irretrievable sources.

Comment: Several commenters objected to submitting reports on irretrievable sources to State agencies having regulatory authority over the drilling because those agencies already require the drilling company or operator to file reports containing the same information. Thus, the reports were characterized as redundant, unnecessary, and a breach of logging company-customer confidence.

Response: Although the licensee and the drilling company or well operator would both be required to submit the same information to the State, the recommended change was not adopted because the logging company has direct first-hand information and is most knowledgeable about the nature of the radioactive source. Therefore the logging company is in the best position to send an authoritative report. Moreover, the NRC may not have regulatory authority over the drilling company or well operator. If the NRC relied on reports filed by those non-licensees, the NRC would have no method of ensuring the submittal of information needed to protect public health and safety unless the NRC required its licensees to submit the information. The NRC will use these reports to determine that the irretrievable source has been abandoned properly. The State agency will use the report to prohibit future drilling at the location that could rupture the source.

Comment: A few commenters suggested that the rule should contain criteria for determining what is a reasonable effort to retrieve a lodged source.

Response: The suggestion was not adopted because there are numerous factors in deciding the amount of reasonable effort. These factors will depend on the circumstances of a particular recovery effort. In some cases the NRC recognizes that it would be too expensive, impractical, dangerous, or even impossible to recover a source. Therefore, reasonability will be determined on a case-by-case basis. While this is not an ideal situation, neither commenters nor the NRC have identified a better solution.

Comment: Commenters agreed that ruptured sources should be reported immediately by telephone. However, several thought that the written report describing the circumstances, assessment of consequences, and mitigation efforts should be made within 30 days rather than 5 days because insufficient information would be available in 5 days to make a reasonably complete report. In addition, commenters noted that Part 20 allows 30 days for similar situations.

Response: The NRC agrees. Immediate telephone notification remains in the rule, because ruptue of a source presents an immediate and significant hazard but the written reporting period was revised to 30 days. This will allow the licensee more time to take and complete the corrective actions and then make a complete report.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. These requirements are designed to control the use of licensed materials in well-logging operations. Most of these requirements are already contained in licenses as license conditions. Therefore, the final rule has no measurable negative environmental impact. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available without charge upon written request from NRC Publication Services Section, USNRC, Washington, DC 20555.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget, approval number 3150–0130.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. Interested persons may examine a copy of the regulatory analysis at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis may be obtained without charge upon written request from NRC Publication Services Section, USNRC, Washington, DC 20555.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The final rule provides radiation safety requirements, promotes uniformity in NRC and Agreement State regulations, and specifies requirements that would reduce the risks of accidents involving radiation or radioactive materials. The final rule affects about 171 specific licensees, of which approximately 60% are small entities based on the size standards adopted by the Nuclear Regulatory Commission (50 FR 50241, December 9, 1985). Under these size standards, well logging licensees whose annual receipts are less than $3.5 million are considered to be small entities.

The Commission estimates that the total cost of compliance with the requirements contained in this regulation is approximately $155,000 a year for an average well logging licensee and roughly $47,000,000/year for all companies. However, all well logging licensees should be in compliance with virtually all of these requirements because the requirements are currently mandated by NRC regulations or imposed as conditions of the license under which the well loggers operate even is States that have adopted Part W. Therefore, the actual increase in cost of compliance to a licensee would be negligible. The estimated cost to an average well logging licensee for additional requirements imposed by this rule is essentially zero.

Therefore, the Commission finds that this regulation does not impose a significant economic impact on most licensees. A detailed analysis of the cost of each individual requirement imposed by the regulation appears in the Regulatory Analysis prepared for this action.

Backfit Analysis

The staff has determined that a backfit analysis is not required for this final rule because 10 CFR 50.109 does not apply to well logging.

List of Subjects

10 CFR Part 19

Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Penalty, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 20

Byproduct material, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

10 CFR Part 21

Nuclear power plants and reactors, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 30

Byproduct material, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 39

Byproduct material, Nuclear material, Oil and gas exploration-well logging, Penalty, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Source material, Special nuclear material.

10 CFR Part 40

Government contracts, Hazardous materials-transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 70

Hazardous materials-transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 71

Hazardous materials-transportation, Nuclear materials, Packaging and containers, Penalty, Reporting and recordkeeping requirements.

10 CFR Part 150

Hazardous materials-transportation, Intergovernmental relations, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 19, 20, 21, 30, 39, 40, 51, 70, 71 and 150.

1. Part 39 is added to 10 CFR Chapter I to read as follows:

PART 39—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR WELL LOGGING

Subpart A—General Provisions

Subpart B—Specific Licensing Requirements.

Subpart C—Equipment

Subpart D—Radiation Safety Requirements

Subpart E—Security, Records, Notifications

Sec.

Authority: Secs. 53, 57, 62, 63, 65, 69, 81, 82, 161, 182, 183, 186, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 39.15, 39.17, 39.31–39.51, 39.61–39.77 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b); and §§ 39.15, 39.33–39.43, 39.61–39.67, 39.73–39.77 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

Subpart A—General Provisions

§ 39.1 Purpose and scope.

(a) This part prescribes requirements for the issuance of a license authorizing the use of licensed materials including sealed sources, radioactive tracers, radioactive markers, and uranium sinker bars in well logging in a single well. This part also prescribes radiation safety requirements for persons using licensed materials in these operations. The provisions and requirements of this part are in addition to, and not in substitution for, other requirements of this chapter. In particular, the provisions of Parts 19, 20, 21, 30, 40, 70, 71, and 150 of this chapter apply to applicants and licensees subject to this part.

(b) The requirements set out in this part do not apply to the issuance of a license authorizing the use of licensed material in tracer studies involving multiple wells, such as field flooding studies, or to the use of sealed sources auxiliary to well logging but not lowered into wells.

§ 39.2 Definitions.

"Field station" means a facility where licensed material may be stored or used and from which equipment is dispatched to temporary jobsites.

"Fresh water aquifer," for the purpose of this part, means a geologic formation that is capable of yielding fresh water to a well or spring.

"Injection tool" means a device used for controlled subsurface injection of radioactive tracer material.

"Irretrievable well logging source" means any sealed source containing licensed material that is pulled off or not connected to the wireline that suspends the source in the well and for which all reasonable effort at recovery has been expended.

"Licensed material" means byproduct, source, or special nuclear material received, processed, used, or transferred under a license issued by the Commission under the regulations in this chapter.

"Logging assistant" means any individual who, under the personal supervision of a logging supervisor, handles sealed sources or tracers that are not in logging tools or shipping containers or who performs surveys required by § 39.67.

"Logging supervisor" means an individual who uses licensed material or provides personal supervision in the use of licensed material at a temporary jobsite and who is responsible to the licensee for assuring compliance with the requirements of the Commission's regulations and the conditions of the license.

"Logging tool" means a device used subsurface to perform well logging.

"Personal supervision" means guidance and instruction by a logging supervisor, who is physically present at a temporary jobsite, who is in personal contact with logging assistants, and who can give immediate assistance.

"Radioactive marker" means licensed material used for depth determination or direction orientation. For purposes of this part, this term includes radioactive collar markers and radioactive iron nails.

"Safety review" means a periodic review provided by the licensee for its employees on radiation safety aspects of well logging. The review may include, as appropriate, the results of internal inspections, new procedures or equipment, accidents or errors that have been observed, and opportunities for employees to ask safety questions.

"Sealed source" means any licensed material that is encased in a capsule designed to prevent leakage or escape of the licensed material.

"Source holder" means a housing or assembly into which a sealed source is placed to facilitate the handling and use of the source in well logging.

"Subsurface tracer study" means the release of unsealed license material or a substance labeled with licensed material in a single well for the purpose of tracing the movement or position of the material or substance in the well or adjacent formation.

"Surface casing for protecting fresh water aquifers" means a pipe or tube used as a lining in a well to isolate fresh water aquifers from the well.

"Temporary jobsite" means a place where licensed material are present for the purpose of performing well logging or subsurface tracer studies.

"Uranium sinker bar" means a weight containing depleted uranium used to pull a logging tool toward the bottom of a well.

"Well" means a drilled hole in which well logging may be performed. As used in this part, "well" includes drilled holes for the purpose of oil, gas, mineral, groundwater, or geological exploration.

"Well logging" means all operations involving the lowering and raising of measuring devices or tools which contain licensed material or are used to detect licensed materials in wells for the purpose of obtaining information about the well or adjacent formations which may be used in oil, gas, mineral, groundwater, or geological exploration.

§ 39.5 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission, other than a written interpretation by the General Counsel, will be recognized to be binding upon the Commission.

§ 39.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S. 3501 et seq.) OMB has approved the information collection requirements contained in this part under control number 3150–0130.

(b) The approved information collection requirements contained in this part appear in §§ 39.11, 39.13, 39.15, 39.31, 39.33, 39.35, 39.37, 39.39, 39.43, 39.49, 39.51, 39.61, 39.65, 39.67, 39.73, 39.75, and 39.77.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved are as follows:

(1) In § 39.11, Form NRC–313 is approved under control number 3150–0120.

Subpart B—Specific Licensing Requirements

§ 39.11 Application for a specific license.

A person, as defined in § 30.4 of this chapter, shall file an application for a specific license authorizing the use of licensed material in well logging on Form NRC 313, "Application for Material License." Each application for

a license, other than a license exempted from Part 170 of this chapter, must be accompanied by the fee prescribed in § 170.31 of this chapter. The application must be sent to the appropriate NRC Regional Office listed in Appendix D of Part 20 of this chapter.

§ 39.13 Specific licenses for well logging.

The Commission will approve an application for a specific license for the use of licensed material in well logging if the applicant meets the following requirements:

(a) The applicant shall satisfy the general requirements specified in § 30.33 of this chapter for byproduct material, in § 40.32 of this chapter for source material, and in § 70.33 of this chapter for special nuclear material, as appropriate, and any special requirements contained in this part.

(b) The applicant shall develop a program for training logging supervisors and logging assistants and submit to the Commission a description of this program which specifies the—

(1) Initial training;

(2) On-the-job training;

(3) Annual safety reviews provided by the licensee;

(4) Means the applicant will use to demonstrate the logging supervisor's knowledge and understanding of and ability to comply with the Commission's regulations and licensing requirements and the applicant's operating and emergency procedures; and

(5) Means the applicant will use to demonstrate the logging assistant's knowledge and understanding of and ability to comply with the applicant's operating and emergency procedures.

(c) The applicant shall submit to the Commission written operating and emergency procedures as described in § 39.63 or an outline or summary of the procedures that includes the important radiation safety aspects of the procedures.

(d) The applicant shall establish and submit to the Commission its program for annual inspections of the job performance of each logging supervisor to ensure that the Commission's regulations, license requirements, and the applicant's operating and emergency procedures are followed. Inspection records must be retained for 3 years after each annual internal inspection.

(e) The applicant shall submit a description of its overall organizational structure as it applies to the radiation safety responsibilities in well logging, including specified delegations of authority and responsibility.

(f) If an applicant wants to perform leak testing of sealed sources, the applicant shall identify the manufacturers and the model numbers of the leak test kits to be used. If the applicant wants to analyze its own wipe samples, the applicant shall establish procedures to be followed and submit a description of these procedures to the Commission. The description must include the—

(1) Instruments to be used;

(2) Methods of performing the analysis; and

(3) Pertinent experience of the person who will analyze the wipe samples.

§ 39.15 Agreement with well owner or operator.

(a) A licensee may perform well logging with a sealed source only after the licensee has a written agreement with the employing well owner or operator. This written agreement must identify who will meet the following requirements:

(1) If a sealed source becomes lodged in the well, a reasonable effort will be made to recover it.

(2) A person may not attempt to recover a sealed source in a manner which, in the licensee's opinion, could result in its rupture.

(3) The radation monitoring required in § 39.69(a) will be performed.

(4) If the environment, any equipment, or personnel are contaminated with licensed material, they must be decontaminated before release from the site or release for unrestricted use. And

(5) If the sealed source is classified as irretrievable after reasonable efforts at recovery have been expended, the following requirements must be implemented within 30 days:

(i) Each irretrievable well logging source must be immobilized and sealed in place with a cement plug.

(ii) A mechanical device to prevent inadvertent intrusion on the source must be set at some point in the well above the cement plug, unless the cement plug and source are not accessible to any subsequent drilling operations. And

(iii) A permanent identification plaque, constructed of long lasting material such as stainless steel, brass, bronze, or monel, must be mounted at the surface of the well, unless the mounting of the plaque is not practical. The size of the plaque must be at least 7 inches (17 cm) square and 1/8-inch (3 mm) thick. The plaque must contain—

(A) The word "CAUTION";

(B) The radiation symbol (the color requirement in § 20.203 of this chapter need not be met);

(C) The date the source was abandoned;

(D) The name of the well owner or well operator, as appropriate;

(E) The well name and well identification number(s) or other designation;

(F) An identification of the sealed source(s) by radionuclide and quantity;

(G) The depth of the source and depth to the top of the plug; and

(H) An appropriate warning, such as, "DO NOT RE-ENTER THIS WELL."

(b) The licensee shall retain a copy of the written agreement for 3 years after the completion of the well logging operation.

(c) A licensee may apply, pursuant to § 39.91, for Commission approval, on a case-by-case basis, of proposed procedures to abandon an irretrievable well logging source in a manner not otherwise authorized in paragraph (a)(5) of this section.

(d) A written agreement between the licensee and the well owner or operator is not required if the licensee and the well owner or operator are part of the same corporate structure or otherwise similarly affiliated. However, the licensee shall still otherwise meet the requirements in paragraphs (a)(1) through (a)(5).

§ 39.17 Request for written statements.

Each license is issued with the condition that the licensee will, at any time before expiration of the license, upon the Commission's request, submit written statements, signed under oath or affirmation, to enable the Commission to determine whether or not the license should be modified, suspended, or revoked.

Subpart C—Equipment

§ 39.31 Labels, security, and transportation precautions.

(a) *Labels.*

(1) The licensee may not use a source, source holder, or logging tool that contains licensed material unless the smallest component that is transported as a separate piece of equipment with the licensed material inside bears a durable, legible, and clearly visible marking or label. The marking or label must contain the radiation symbol specified in § 20.203 of this chapter, without the conventional color requirements, and the wording "DANGER (or CAUTION) RADIOACTIVE MATERIAL."

(2) The licensee may not use a container to store licensed material unless the container has securely attached to it a durable, legible, and clearly visible label. The label must contain the radiation symbol specified in § 20.203 of this chapter and the wording "CAUTION (or DANGER),

RADIOACTIVE MATERIAL, NOTIFY CIVIL AUTHORITIES (or NAME OF COMPANY)."

(3) The licensee may not transport licensed material unless the material is packaged, labeled, marked, and accompanied with appropriate shipping papers in accordance with regulations set out in 10 CFR Part 71.

(b) *Security precautions during storage and transportation.* (1) The licensee shall store each source containing licensed material in a storage container or transportation package. The container or package must be locked and physically secured to prevent tampering or removal of licensed material from storage by unauthorized personnel. The licensee shall store licensed material in a manner which will minimize danger from explosion or fire.

(2) The licensee shall lock and physically secure the transport package containing licensed material in the transporting vehicle to prevent accidental loss, tampering, or unauthorized removal of the licensed material from the vehicle.

§ 39.33 Radiation detection instruments.

(a) The licensee shall keep a calibrated and operable radiation survey instrument capable of detecting beta and gamma radiation at each field station and temporary jobsite to make the radiation surveys required by this part and by Part 20 of this chapter. To satisfy this requirement, the radiation survey instrument must be capable of measuring 0.1 milliroentgen 2.58×10^{-8} C/kg per hour through at least 50 milliroentgens 1.29×10^{-5} C/kg per hour. Survey instruments acquired before [the effective date] and capable of measuring 0.1 milliroentgen (2.58×10^{-8} C/kg) per hour through at least 20 milliroentgens (5.16×10^{-6} C/kg) per hour also satisfy this requirement until July 14, 1992.

(b) The licensee shall have available additional calibrated and operable radiation detection instruments sensitive enough to detect the low radiation and contamination levels that could be encountered if a sealed source ruptured. The licensee may own the instruments or may have a procedure to obtain them quickly from a second party.

(c) The licensee shall have each radiation survey instrument required under paragraph (a) of this section calibrated—

(1) At intervals not to exceed 6 months and after instrument servicing;

(2) For linear scale instruments, at two points located approximately ⅓ and ⅔ of full-scale on each scale; for logarithmic scale instruments, at midrange of each decade, and at two points of at least one decade; and for digital instruments, at appropriate points; and

(3) So that an accuracy within plus or minus 20 percent of the calibration standard can be demonstrated on each scale.

(d) The licensee shall retain calibration records for a period of 3 years after the date of calibration for inspection by the Commission.

§ 39.35 Leak testing of sealed sources.

(a) *Testing and recordkeeping requirements.* Each licensee who uses a sealed source shall have the source tested for leakage periodically. The licensee shall keep a record of leak test results in units of microcuries and retain the record for inspection by the Commission for 3 years after the leak test is performed.

(b) *Method of testing.* The wipe of a sealed source must be performed using a leak test kit or method approved by the Commission or an Agreement State. The wipe sample must be taken from the nearest accessible point to the sealed source where contamination might accumulate. The wipe sample must be analyzed for radioactive contamination. The analysis must be capable of detecting the presence of 0.005 microcurie (185 Bq) of radioactive material on the test sample and must be performed by a person approved by the Commission or an Agreement State to perform the analysis.

(c) *Test frequency.* Each sealed source must be tested at intervals not to exceed 6 months. In the absence of a certificate from a transferor that a test has been made within the 6 months before the transfer, the sealed source may not be used until tested.

(d) *Removal of leaking source from service.* (1) If the test conducted pursuant to paragraphs (a) and (b) of this section reveals the presence of 0.005 microcurie (185 Bq) or more of removable radioactive material, the licensee shall remove the sealed source from service immediately and have it decontaminated, repaired, or disposed of by an NRC or Agreement State licensee that is authorized to perform these functions. The licensee shall check the equipment associated with the leaking source for radioactive contamination and, if contaminated, have it decontaminated or disposed of by an NRC or Agreement State licensee that is authorized to perform these functions.

(2) The licensee shall submit a report to the appropriate NRC Regional Office listed in Appendix D of Part 20 of this chapter, within 5 days of receiving the test results. The report must describe the equipment involved in the leak, the test results, any contamination which resulted from the leaking source, and the corrective actions taken up to the time the report is made.

(e) *Exemptions from testing requirements.* The following sealed sources are exempt from the periodic leak test requirements set out in paragraphs (a) through (d) of this section:

(1) Hydrogen-3 sources;

(2) Sources containing licensed material with a half-life of 30 days or less;

(3) Sealed sources containing licensed material in gaseous form;

(4) Sources of beta- or gamma-emitting radioactive material with an activity of 100 microcuries (3,700,000 Bq) or less; and

(5) Sources of alpha- or neutron-emitting radioactive material with an activity of 10 microcuries (370,000 Bq) or less.

§ 39.37 Physical inventory.

Each licensee shall conduct a semi-annual physical inventory to account for all licensed material received and possessed under the license. The licensee shall retain records of the inventory for 3 years from the date of the inventory for inspection by the Commission. The inventory must indicate the quantity and kind of licensed material, the location of the licensed material, the date of the inventory, and the name of the individual conducting the inventory. Physical inventory records may be combined with leak test records.

§ 39.39 Records of material use.

(a) Each licensee shall maintain records for each use of licensed material showing—

(1) The make, model number, and a serial number or a description of each sealed source used;

(2) In the case of unsealed licensed material used for subsurface tracer studies, the radionuclide and quantity of activity used in a particular well and the disposition of any unused tracer materials;

(3) The identity of the logging supervisor who is responsible for the licensed material and the identity of logging assistants present; and

(4) The location and date of use of the licensed material.

(b) The licensee shall make the records required by paragraph (a) of this section available for inspection by the Commission. The licensee shall retain

the records for 3 years from the date of the recorded event.

§ 39.41 Design and performance criteria for sealed sources.

(a) After July 14, 1989, a licensee may not use a sealed source in well logging unless the sealed source—

(1) Is doubly encapsulated;

(2) Contains licensed material whose chemical and physical forms are as insoluble and nondispersible as practical; and

(3) The sealed source's prototype has been tested and found to maintain its integrity after each of the following tests:

(i) *Temperature.* The test source must be held at −40 °C for 20 minutes, 600 °C for 1 hour, and then be subject to a thermal shock test with a temperature drop from 600 °C to 20 °C within 15 seconds.

(ii) *Impact Test.* A 5 kg steel hammer, 2.5 cm in diameter, must be dropped from a height of 1 m onto the test source.

(iii) *Vibration test.* The test source must be subject to a vibration from 25 Hz to 500 Hz at 5 g amplitude for 30 minutes.

(iv) *Puncture test.* A 1 gram hammer and pin, 0.3 cm pin diameter, must be dropped from a height of 1 m onto the test source.

(v) *Pressure test.* The test source must be subjected to an external pressure of 24,600 pounds per square inch absolute (1.695×10^7 pascals).

(b) The requirements in paragraph (a) of this section do not apply to sealed sources that contain licensed material in gaseous form.

§ 39.43 Inspection, maintenance, and opening of a source or source holder.

(a) Each licensee shall visually check source holders, logging tools, and source handling tools, for defects before each use to ensure that the equipment is in good working condition and that required labeling is present. If defects are found, the equipment must be removed from service until repaired, and a record must be made listing: the date of check, name of inspector, equipment involved, defects found, and repairs made. These records must be retained for 3 years after the defect is found.

(b) Each licensee shall have a program for semiannual visual inspection and routine maintenance of source holders, logging tools, injection tools, source handling tools, storage containers, transport containers, and uranium sinker bars to ensure that the required labeling is legible and that no physical damage is visible. If defects are found, the equipment must be removed from service until repaired, and a record must be made listing: date, equipment involved, inspection and maintenance operations performed, any defects found, and any actions taken to correct the defects. These records must be retained for 3 years after the defect is found.

(c) Removal of a sealed source from a source holder or logging tool, and maintenance on sealed sources or holders in which sealed sources are contained may not be performed by the licensee unless a written procedure developed pursuant to § 39.63 has been approved either by the Commission pursuant to § 39.13(c) or by an Agreement State.

(d) If a sealed source is stuck in the source holder, the licensee may not perform any operation, such as drilling, cutting, or chiseling, on the source holder unless the licensee is specifically approved by the Commission or an Agreement State to perform this operation.

(e) The opening, repair, or modification of any sealed source must be performed by persons specifically approved to do so by the Commission or an Agreement State.

§ 39.45 Subsurface tracer studies.

(a) The licensee shall require all personnel handling radioactive tracer material to use protective gloves and, if required by the license, other protective clothing and equipment. The licensee shall take precautions to avoid ingestion or inhalation of radioactive tracer material and to avoid contamination of field stations and temporary jobsites.

(b) A licensee may not knowingly inject licensed material into fresh water aquifers unless specifically authorized to do so by the Commission.

§ 39.47 Radioactive markers.

The licensee may use radioactive markers in wells only if the individual markers contain quantities of licensed material not exceeding the quantities specified in § 30.71 of this chapter. The ues of markers is subject only to the requirements of § 39.37.

§ 39.49 Uranium sinker bars.

The licensee may use a uranium sinker bar in well logging after July 14, 1988, only if it is legibly impressed with the words "CAUTION— RADIOACTIVE-DEPLETED URANIUM" and "NOTIFY CIVIL AUTHORITIES (or COMPANY NAME) IF FOUND."

§ 39.51 Use of a sealed source in a well without a surface casing.

The licensee may use a sealed source in a well without a surface casing for protecting fresh water aquifers only if the licensee follows a procedure for reducing the probability of the source becoming lodged in the well. The procedure must be approved by the Commission pursuant to § 39.13(c) or by an Agreement State.

Subpart D—Radiation Safety Requirements

§ 39.61 Training.

(a) The licensee may not permit an individual to act as a logging supervisor until that person—

(1) Has completed training in the subjects outlined in paragraph (e) of this section;

(2) Has received copies of, and instruction in—

(i) The NRC regulations contained in the applicable sections of Parts 19, 20, and 39 of this chapter;

(ii) The NRC license under which the logging supervisor will perform well logging; and

(iii) The licensee's operating and emergency procedures required by § 39.63;

(3) Has completed on-the-job training and demonstrated competence in the use of licensed materials, remote handling tools, and radiation survey instruments by a field evaluation; and

(4) Has demonstrated understanding of the requirements in paragraphs (a) (1) and (2) of this section by successfully completing a written test.

(b) The licensee may not permit an individual to act as a logging assistant until that person—

(1) Has received instruction in applicable sections of Parts 19 and 20 of this chapter;

(2) Has received copies of, and instruction in, the licensee's operating and emergency procedures required by § 39.63;

(3) Has demonstrated understanding of the materials listed in paragraphs (b) (1) and (2) of this section by successfully completing a written or oral test; and

(4) Has received instruction in the use of licensed materials, remote handling tools, and radiation survey instruments, as appropriate for the logging assistant's intended job responsibilities.

(c) The licensee shall provide safety reviews for logging supervisors and logging assistants at least once during each calendar year.

(d) The licensee shall maintain a record on each logging supervisor's and logging assistant's training and annual safety review. The training records must include copies of written tests and dates of oral tests given after July 14, 1987. The training records must be retained until 3 years following the termination of employment. Records of annual safety

reviews must list the topics discussed and be retained for 3 years.

(e) The licensee shall include the following subjects in the training required in paragraph (a)(1) of this section:

(1) Fundamentals of radiation safety including—

(i) Characteristics of radiation;

(ii) Units of radiation dose and quantity of radioactivity;

(iii) Hazards of exposure to radiation;

(iv) Levels of radiation from licensed material;

(v) Methods of controlling radiation dose (time, distance, and shielding); and

(vi) Radiation safety practices, including prevention of contamination, and methods of decontamination.

(2) Radiation detection instruments including—

(i) Use, operation, calibration, and limitations of radiation survey instruments;

(ii) Survey techniques; and

(iii) Use of personnel monitoring equipment;

(3) Equipment to be used including—

(i) Operation of equipment, including source handling equipment and remote handling tools;

(ii) Storage, control, and disposal of licensed material; and

(iii) Maintenance of equipment.

(4) The requirements of pertinent Federal regulations. And

(5) Case histories of accidents in well logging.

§ 39.63 Operating and emergency procedures.

Each licensee shall develop and follow written operating and emergency procedures that cover—

(a) The handling and use of licensed materials including the use of sealed sources in wells without surface casing for protecting fresh water aquifers, if appropriate;

(b) The use of remote handling tools for handling sealed sources and radioactive tracer material except low-activity calibration sources;

(c) Methods and occasions for conducting radiation surveys, including surveys for detecting contamination, as required by § 39.67(c)–(e);

(d) Minimizing personnel exposure including exposures from inhalation and ingestion of licensed tracer materials;

(e) Methods and occasions for locking and securing stored licensed materials;

(f) Personnel monitoring and the use of personnel monitoring equipment;

(g) Transportation of licensed materials to field stations or temporary jobsites, packaging of licensed materials for transport in vehicles, placarding of vehicles when needed, and physically securing licensed materials in transport vehicles during transportation to prevent accidental loss, tampering, or unauthorized removal;

(h) Picking up, receiving, and opening packages containing licensed materials, in accordance with § 20.205 of this chapter;

(i) For the use of tracers, decontamination of the environment, equipment, and personnel;

(j) Maintenance of records generated by logging personnel at temporary jobsites;

(k) The inspection and maintenance of sealed sources, source holders, logging tools, injection tools, source handling tools, storage containers, transport containers, and uranium sinker bars as required by § 39.43;

(l) Identifying and reporting to NRC defects and noncompliance as required by Part 21 of this chapter;

(m) Actions to be taken if a sealed source is lodged in a well;

(n) Notifying proper persons in the event of an accident; and

(o) Actions to be taken if a sealed source is ruptured including actions to prevent the spread of contamination and minimize inhalation and ingestion of licensed materials and actions to obtain suitable radiation survey instruments as required by § 39.33(b).

§ 39.65 Personnel monitoring.

(a) The licensee may not permit an individual to act as a logging supervisor or logging assistant unless that person wears, at all times during the handling of licensed radioactive materials, either a film badge or a thermoluminescent dosimeter (TLD), Each film badge or TLD must be assigned to and worn by only one individual. Film badges must be replaced at least monthly and TLDs replaced at least quarterly. After replacement, each film badge or TLD must be promptly processed.

(b) The licensee shall provide bioassay services to individuals using licensed materials in subsurface tracer studies if required by the license.

(c) The licensee shall retain records of film badge, TLD and bioassay results for inspection until the Commission authorizes disposition of the records.

§ 39.67 Radiation surveys.

(a) The licensee shall make radiation surveys, including but not limited to the surveys required under paragraphs (b) through (e) of this section, of each area where licensed materials are used and stored.

(b) Before transporting licensed materials, the licensee shall make a radiation survey of the position occupied by each individual in the vehicle and of the exterior of each vehicle used to transport the licensed materials.

(c) If the sealed source assembly is removed from the logging tool before departure from the temporary jobsite, the licensee shall confirm that the logging tool is free of contamination by energizing the logging tool detector or by using a survey meter.

(d) If the licensee has reason to believe that, as a result of any operation involving a sealed source, the encapsulation of the sealed source could be damaged by the operation, the licensee shall conduct a radiation survey, including a contamination survey, during and after the operation.

(e) The licensee shall make a radiation survey at the temporary jobsite before and after each subsurface tracer study to confirm the absence of contamination.

(f) The results of surveys required under paragraphs (a) through (e) of this section mut be recorded and must include the date of the survey, the name of the individual making the survey, the identification of the survey, instrument used, and the location of the survey. The licensee shall retain records of surveys for inspection by the Commission for 3 years after they are made.

§ 39.69 Radioactive contamination control.

(a) If the licensee detects evidence that a sealed source has ruptured or licensed materials have caused contamination, the licensee shall initiate immediately the emergency procedures required by § 39.63.

(b) If contamination results from the use of licensed material in well logging, the licensee shall decontaminate all work areas, equipment, and unrestricted areas.

(c) During efforts to recover a sealed source lodged in the well, the licensee shall continuously monitor, with an appropriate radiation detection instrument or a logging tool with a radiation detector, the circulating fluids from the well, if any, to check for contamination resulting from damage to the sealed source.

Subpart E—Security, Records, Notifications

§ 39.71 Security.

(a) A logging supervisor must be physically present at a temporary jobsite whenever licensed material are being handled or are not stored and locked in a vehicle or storage place. The logging supervisor may leave the jobsite

in order to obtain assistance if a source becomes lodged in a well.

(b) During well logging, except when radiation sources are below ground or in shipping or storage containers, the logging supervisor or other individual designated by the logging supervisor shall maintain direct surveillance of the operation to prevent unauthorized entry into a restricted area, as defined in § 20.3 of this chapter.

§ 39.73 Documents and records required at field stations.

Each licensee shall maintain the following documents and records at the field station:

(a) A copy of Parts 19, 20, and 39 of NRC regulations;

(b) The license authorizing the use of licensed material;

(c) Operating and emergency procedures required by § 39.63;

(d) The record of radiation survey instrument calibrations required by § 39.33;

(e) The record of leak test results required by § 39.35;

(f) Physical inventory records required by § 39.37;

(g) Utilization records required by § 39.39;

(h) Records of inspection and maintenance required by § 39.43;

(i) Training records required by § 39.61(d), and

(j) Survey records required by § 39.67.

§ 39.75 Documents and records required at temporary jobsites.

Each licensee conducting operations at a temporary jobsite shall maintain the following documents and records at the temporary jobsite until the well logging operation is completed:

(a) Operating and emergency procedures required by § 39.63.

(b) Evidence of latest calibration of the radiation survey instruments in use at the site required by § 39.33.

(c) Latest survey records required by §§ 39.67 (b), (c), and (e).

(d) The shipping papers for the transportation of radioactive materials required by § 71.5 of this chapter; and

(e) When operating under reciprocity pursuant to § 150.20 of this chapter, a copy of the Agreement State license authorizing use of licensed materials.

§ 39.77 Notification of incidents and lost sources; abandonment procedures for irretrievable sources.

(a) The licensee shall immediately notify the appropriate NRC Regional Office by telephone and subsequently, within 30 days, by confirmatory letter if the licensee knows or has reason to believe that a sealed source has been ruptured. The letter must designate the well or other location, describe the magnitude and extent of the escape of licensed materials, assess the consequences of the rupture, and explain efforts planned or being taken to mitigate these consequences.

(b) The licensee shall notify the Commission of the theft or loss of radioactive materials, radiation overexposures, excessive levels and concentrations of radiation, and certain other accidents as required by §§ 20.402, 20.403, and 20.405 of this chapter.

(c) If a sealed source becomes lodged in a well, and when it becomes apparent that efforts to recover the sealed source will not be successful, the licensee shall—

(1) Notify the appropriate NRC Regional Office by telephone of the circumstances that resulted in the inability to retrieve the source and obtain approval to implement abandonment procedures; and

(2) Advise the well owner or operator, as appropriate, of the abandonment procedures under § 39.15 (a) or (c); and

(3) Either ensure that abandonment procedures are implemented within 30 days after the sealed source has been classified as irretrievable or request an extension of time if unable to complete the abandonment procedures.

(d) The licensee shall, within 30 days after a sealed source has been classified as irretrievable, make a report in writing to the appropriate NRC Regional Office. The licensee shall send a copy of the report to each appropriate State or Federal agency that issued permits or otherwise approved of the drilling operation. The report must contain the following information:

(1) Date of occurrence;

(2) A description of the irretrievable well logging source involved including the radionuclide and its quantity, chemical, and physical form;

(3) Surface location and identification of the well;

(4) Results of efforts to immobilize and seal the source in place;

(5) A brief description of the attempted recovery effort;

(6) Depth of the source;

(7) Depth of the top of the cement plug;

(8) Depth of the well;

(9) Any other information, such as a warning statement, contained on the permanent identification plaque; and

(10) State and Federal agencies receiving copy of this report.

Subpart F—Exemptions

§ 39.91 Applications for exemptions.

The Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

Subpart G—Enforcement

§ 39.101 Violations.

(a) An injunction or other court order may be obtained to prohibit a violation of any provision of this part.

(b) A court order may be obtained for the payment of a civil penalty imposed for violation of this part.

(c) Any person who willfully violates any provision of this part issued under section 161 b., i., or o. of the Atomic Energy Act of 1954, as amended, or the provisions cited in the authority citation at the beginning of this part may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment, or both, as provided by law.

PART 19—NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS; INSPECTIONS

2. The authority citation for Part 19 continues to read as follows:

Authority: Sec. 161, Pub. L. 83-703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 19.2 [Amended]

3. Section 19.2 is amended by adding "39," after "Parts 30 through 35."

§ 19.3 [Amended]

4. Section 19.3(d) is amended by adding "39," after "Parts 30 through 35," in the first sentence.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

5. The authority citation for Part 20 continues to read as follows:

Authority: Sec. 161, Pub. L. 83-703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 20.2 [Amended]

6. Section 20.2 is amended by adding "39," after "Parts 30 through 35."

§ 20.3 [Amended]

7. Section 20.3(a)(9) is amended by adding "39," after "Parts 30 through 35."

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

8. The authority citation for Part 21 continues to read as follows:

Authority: Sec. 161, Pub. L. 83-703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 21.2 [Amended]

9. Section 21.2 is amended by adding "39," after "34, 35," in the first sentence.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

10. The authority citation for Part 30 continues to read as follows:

Authority: Sec. 161, Pub. L. 83-703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 30.4 [Amended]

11. In § 30.4, the introductory text and also paragraphs (b) and (i) are amended by adding "and 39" after "31 through 35", and paragraph (x) is removed.

§ 30.5 [Amended]

12. Section 30.5 is amended by adding "and 39" after "31 through 35".

§ 30.6 [Amended]

13. In § 30.6, paragraphs (a) and (b)(1) are amended by adding "39" after "30 through 35".

§ 30.11 [Amended]

14. In § 30.11, paragraph (a) is amended by adding "and 39" after "31 through 35".

§ 30.13 [Amended]

15. Section 30.13 is amended by adding "and 39" after "31 through 35".

§ 30.14 [Amended]

16. In § 30.14, paragraph (a) is amended by adding "and 39" after "31 through 35," and paragraph (c) is amended by removing "and 34" and adding "34 and 39" after "32, 33".

§ 30.15 [Amended]

17. In § 30.15, paragraph (a) is amended by adding "and 39" after "31 through 35".

§ 30.16 [Amended]

18. Section 30.16 is amended by adding "and 39" after "30 through 35".

§ 30.18 [Amended]

19. In § 30.18, paragraph (a) is amended by adding "and 39" after "30 through 34".

§ 30.19 [Amended]

20. In § 30.19, paragraph (a) is amended by adding "and 39" after "30 through 35".

§ 30.20 [Amended]

21. In § 30.20, paragraph (a) is amended by adding "and 39" after "30 through 35".

§ 30.31 [Amended]

22. Section 30.31 is amended by adding "and 39" after "32 through 35".

§ 30.33 [Amended]

23. Section 30.33, paragraph (a)(4) is amended by adding "and 39" after "32 through 35".

§ 30.34 [Amended]

24. Section 30.34, paragraphs (a) and (b) are amended by adding "and 39" after "31 through 35"; paragraph (c) is amended by adding "and 39" after "31 through 35" in the first and the second sentences; paragraphs (d) and (e) are amended by adding "and 39" after "31 through 35".

§ 30.39 [Amended]

25. Section 30.39 is amended by adding "and 39" after "32 through 35".

§ 30.51 [Amended]

26. In § 30.51, paragraphs (a), (b), (d)(1), and (d)(2) are amended by adding "and 39" after "31 through 35".

§ 30.53 [Amended]

27. Section 30.53 is amended by adding "and 39" after "31 through 35".

§ 30.56 [Removed]

28. Section 30.56 is removed.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

29. The authority citation for Part 40 continues to read as follows:

Authority: Sec. 161, Pub. L. 83-703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 40.5 [Amended]

30. In § 40.5, paragraph (b)(1) is amended by adding "39," after "30 through 35," in the first sentence.

PART 51—ENVIRONMENTAL REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

31. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); secs. 201, as amended, 202, 88 Stat. 1242, as amended 1244 (42 U.S.C. 5841, 5842).

§ 51.22 [Amended]

32. In § 51.22, paragraphs (c)(3), (c)(10) and (c)(14) are amended by adding "39," after "34, 35."

§ 51.60 [Amended]

33. In § 51.60, paragraph (a) is amended by adding "39," after "34, 35,".

§ 51.66 [Amended]

34. In § 51.66, paragraph (a) is amended by adding "39," after "34, 35,".

§ 51.68 [Amended]

35. Section 51.66 is amended by adding "39," after "34, 35,".

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

36. The authority citation for Part 70 continues to read as follows:

Authority: Sec. 161, Pub. L. 83-703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 70.4 [Amended]

37. In § 70.4, paragraph (w) is removed and reserved.

§ 70.5 [Amended]

38. In § 70.5, paragraph (b)(1) is amended by adding "39" after "30 through 35."

§ 70.20a [Amended]

39. In § 70.20a, paragraph (b) is amended by adding "39," after "30 through 35,".

§ 70.60 [Removed]

40. Section 70.60, is removed.

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

41. The authority citation for Part 71 continues to read as follows:

Authority: Sec. 161, Pub. L. 83-703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 71.0 [Amended]

42. In § 71.0, paragraph (b) is amended by adding "39," after "21, 30," in the first sentence.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

43. The authority citation for Part 150 continues to read as follows:

Authority. Sec. 161, Pub. L. 83-703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 150.20 [Amended]

44. In § 150.20, paragraph (b) is amended by removing "70.60, to 70.62,

inclusive," and adding "70.61, 70.62," after "70.51 to 70.56, inclusive,"; and by adding "§§ 39.15 and 39.31 through 39.77 inclusive of Part 39" after "and to the provisions of Parts 19, 20, and 71" of the first sentence.

PART 170—FEES FOR FACILITIES AND MATERIALS LICENSES AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

45. The authority citation for Part 170 continues to read as follows:

Authority: 31 U.S.C. 9701 96 Stat. 1051; sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 170.2 [Amended]

46. In § 170.2, paragraph (a) is amended by adding "and 39" after "32 through 35".

Dated at Washington, DC, this 11th day of March, 1987.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 87–5610 File 3–16–87; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 561 and 563

[No. 87–247]

Deposit, Share, and Withdrawable Accounts; Technical Amendment

Dated: March 12, 1987.

AGENCY: Federal Loan Bank Board.

ACTION: Final rule; technical amendment.

SUMMARY: The Federal Home Loan Bank Board ("Board") is amending its final regulation concerning Deposit, Share, and Withdrawable Accounts published in the **Federal Register** on Monday, March 31, 1986, (51 FR 10810) in order to correct typographical and other technical errors contained in the Board's regulation.

EFFECTIVE DATE: March 17, 1987.

FOR FURTHER INFORMATION CONTACT: Carol J. Rosa, Paralegal Specialist, Regulations, and Legislation Division, Office of General Counsel, (202) 377–7037, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that, because of the minor, technical nature of this corrective amendment, notice and public procedure are unnecessary, as is the 30-day delay of the effective date.

List of Subjects in 12 CFR Parts 561 and 563

Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby amends Parts 561 and 563, Subchapter D, Chapter V, Title 12 Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

1. The authority citation for Part 561 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et. seq.*); sec. 5A 47 Stat 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend § 561.11a by revising the introductory phrase of paragraph (f)(2) to read as follows:

§ 561.11a Checking accounts.

* * * * *

(f) * * *

(2) Is paid to a *bona fide* broker if:

* * *

3. Amend § 561.11f by revising the first sentence of paragraph (a)(3)(ii) to read as follows:

§ 561.11f Money Market Deposit Accounts.

(a) * * *

(3) * * *

(ii) Adopt procedures to monitor those transfers on an after-the-fact basis and contact customers who exceed the limits on more than an occasional basis. * * *

* * * * *

§ 561.11g [Amended]

4. Amend § 561.11g by correcting the word "withdrawable" the first place it appears in paragraph (a) to read "withdrawal".

PART 563—OPERATIONS

5. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–1948 Comp., p. 1071.

6. Amend § 563.6 by revising paragraph (d) to read as follows:

§ 563.6 Payment of insured accounts on demand.

* * * * *

(d) An insured institution may continue to pay interest for a period between a maturity date and the date of renewal of the deposit: *Provided,* That such certificate is renewed not more than ten days after maturity. The payment of such interest is not payment of interest on a demand deposit.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87–5701 Filed 3–16–87; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86–AGL–11]

Alteration of Federal Airways V–219, V–412 and V–456—MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: On February 10, 1987, the FAA published a final rule to alter Federal Airways V–219, V–412 and V–456 located in the Minneapolis/St. Paul area, effective April 9, 1987. However, since February 10, the realigned V–412 has been found to be unsatisfactory for air traffic control purposes because the minimum en route altitude (MEA) on that amended segment is 7,000 feet, and the new alignment would not improve the flow of traffic in the Minneapolis/St. Paul terminal area. This action amends the final rule, before it becomes effective, to withdraw the amendment to V–412.

EFFECTIVE DATE: 0901 UTC, April 9, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On October 22, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter VOR Federal Airways V-219, V-412 and V-456 (51 FR 37415). The actions were proposed to enhance air traffic control metering in the Minneapolis/St. Paul area and provide airspace configuration more suitable to the traffic flow. A final rule was published on February 10, 1987, that amended the descriptions of V-219, V-412 and V-456 to improve the flow of traffic by enhancing the metering program in the Minneapolis/St. Paul area (52 FR 4130). After additional study of these airway changes the FAA has determined that the realigned V-412 would not meet the criteria needed to improve the flow of traffic into the Minneapolis/St. Paul terminal area. This action amends the final rule, before it takes effect, to remove the amendment to V-412.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the final rule as published in the **Federal Register** on February 10, 1987 (52 FR 4130), is amended before its effective date by removing the amendment to V-412.

Issued in Washington, DC, on March 9, 1987.

Harold H. Downey,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-5635 Filed 3-16-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-ASW-15]

Revision of Transition Area: Hebbronville, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will revise the transition area at Hebbronville, TX. The intended effect of the amendment is to provide controlled airspace for aircraft executing a new special instrument approach procedure (SIAP) to the Wyatt Ranch Airport, Hebbronville, TX. This action is necessary since a nonfederal nondirectional radio beacon (NDB) has been installed to serve the Wyatt Ranch Airport. Also, a review of Jim Hogg County Airport operations has revealed a need for additional 700-foot transition area airspace to accommodate the type aircraft currently using the airport. Coincident with this action, the Wyatt Ranch Airport status will be changed from visual flight rules (VFR) to instrument flight rules (IFR).

EFFECTIVE DATE: 0901 UTC, July 2, 1987.

FOR FURTHER INFORMATION CONTACT: Robert P. Wheeler, Airspace and Procedures Branch (ASW-534), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On June 6, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Hebbronville, TX, transition area (51 FR 22825).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the Hebbronville, TX, transition area to provide adequate controlled airspace at and above 700 feet above ground level for an SIAP to the Wyatt Ranch Airport utilizing the Wyatt Ranch NDB (PWY). This action will also provide additional controlled airspace for the Jim Hogg County Airport. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under IFR and other aircraft operating under VFR. This action will also change the status of the Wyatt Ranch Airport from VFR to IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas, etc.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; EO 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Hebbronville, TX [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Jim Hogg County Airport (lat. 27°20'57" N., long. 98°44'12" W.), and within 3.5 miles each side of the 326-degree bearing from the NDB (lat. 27°21'13" N., long. 98°44'38" W.) extending from the 6.5-mile radius to 11.5 miles northwest of the NDB; within a 6.5-mile radius of the Wyatt Ranch Airport (lat. 27°25'17" N., long. 98°36'28" W.); within 3 miles each side of the 322-degree bearing from the Wyatt Ranch NDB (lat. 27°25'58" N., long. 98°36'35" W.) extending from the 6.5-mile radius to 8.5 miles northwest of the NDB.

Issued in Fort Worth, TX, on March 5, 1987.

Larry L. Craig,

Assistant Manager, Air Traffic Division, Southwest Region.

[FR Doc. 87-5636 Filed 3-16-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 25203; Amdt. No. 1342]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, D.C. on March 6, 1987.

John S. Kern,

Director of Flight Standards.

Adoption of the Amendment

PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME;

§ 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective May 7, 1987

Auburn, AL—Auburn-Opelika Robert G. Pitts, VOR/DME-A, Amdt. 6
Auburn, AL—Auburn-Opelika Robert G. Pitts, VOR RWY 28, Amdt. 8
Auburn, AL—Auburn-Opelika Robert G. Pitts, LOC RWY 36, Amdt. 2
Auburn, AL—Auburn-Opelika Robert G. Pitts, NDB RWY 36, Orig.
Tuskegee, AL—Moton Field, VOR-A, Amdt. 3
St. Mary's, AK—St. Mary's, LOC/DME RWY 16, Amdt. 1
Oxford, CT—Waterbury-Oxford, ILS RWY 36, Amdt. 6
Americus, GA—Souther Field, LOC RWY 22, Amdt. 2
Americus, GA—Souther Field, NDB RWY 22, Amdt. 2
Jekyll Island, GA—Jekyll Island, VOR-A, Amdt. 7
Jesup, GA—Jesup-Wayne County, NDB RWY 28, Orig.
St Marys, GA—St Marys, RADAR-1, Orig.
St Marys, GA—St Marys, RADAR-1, Orig., CANCELLED
Honolulu, HI—Honolulu Intl, VOR or TACAN-A, Amdt. 1
Honolulu, HI—Honolulu Intl, VOR/DME or TACAN-B, Amdt. 1
Honolulu, HI—Honolulu Intl, LDA/DME RWY 26L, Amdt. 5
Honolulu, HI—Honolulu Intl, NDB RWY 8L, Amdt. 19
Honolulu, HI—Honolulu Intl, ILS RWY 4R, Amdt. 11
Honolulu, HI—Honolulu Intl, ILS RWY 8L, Amdt. 21
Kewanee, IL—Kewanee Muni, NDB RWY 1, Amdt. 5
Kewanee, IL—Kewanee Muni, NDB RWY 9, Amdt. 5
Newton, IA—Newton Muni, VOR RWY 13, Amdt. 6
Newton, IA—Newton Muni, VOR RWY 31, Amdt. 6
Newton, IA—Newton Muni, RNAV RWY 31, Amdt. 1
Ulysses, KS—Ulysses, NDB RWY 12, Amdt. 2
Marksville, LA—Marksville Muni, NDB RWY 4, Amdt. 1
Minden, LA—Minden-Webster, VOR/DME-A, Amdt. 3
Stow, MA—Minute Man Airfield, VOR/DME RWY 21, Amdt. 3
Tewksbury, MA—TEW-MAC, NDB-A, Amdt. 4
Corinth, MS—Roscoe Turner, NDB RWY 17, Amdt. 7
Corinth, MS—Roscoe Turner, NDB RWY 35, Amdt. 6
Jackson, MS—Allen C Thompson Field, VOR or TACAN RWY 15R, Amdt. 6
Jackson, MS—Allen C Thompson Field, VOR/DME or TACAN RWY 33L, Amdt. 10
Jackson, MS—Allen C Thompson Field, VOR/DME or TACAN RWY 33R, Amdt. 3
Jackson, MS—Allen C Thompson Field, LOC BC RWY 15R, Amdt. 3
Jackson, MS—Allen C Thompson Field, ILS RWY 33L, Amdt. 3
Tupelo, MS—C. D. Lemons Muni, NDB RWY 36, Amdt. 3
Tupelo, MS—C. D. Lemons Muni, ILS RWY 36, Amdt. 5
Manchester, NH—Manchester Arpt/Grenier Industrial Airpark, VOR RWY 35, Amdt. 13
Manchester, NH—Manchester Arpt/Grenier Industrial Airpark, ILS RWY 35, Amdt. 15
Nashua, NH—Boire Field, NDB RWY 14, Amdt. 2
Nashua, NH—Boire Field, ILS RWY 14, Amdt. 2
Nashua, NH—Boire Field, RNAV RWY 32, Amdt. 4
Oneonta, NY—Oneonta Muni, LOC RWY 24, Amdt. 1
Elizabeth City, NC—Elizabeth City CG Air Station/Muni, NDB-A, Amdt. 8, CANCELLED
Fayetteville, NC—Fayetteville Muni/Grannis Fld, RADAR-1, Amdt. 5
Greensboro, NC—Greensboro-High Point-Winston Salem Regnl, ILS RWY 23, Amdt. 6
Lexington, NC—Lexington Muni, VOR-A, Amdt. 3
Lexington, NC—Lexington Muni, RNAV RWY 6, Orig, CANCELLED
Salisbury, NC—Rowan County, VOR RWY 20, Orig.
Norwalk, OH—Norwalk-Huron County, VOR-A, Amdt. 3
Sandusky, OH—Griffing Sandusky, VOR/DME RWY 27, Orig.
Tiffin, OH—Seneca County—NDB RWY 24, Amdt. 5
Youngstown, OH—Youngstown Executive, VOR/DME-A, Amdt. 9
Youngstown, OH—Youngstown Executive, VOR RWY 11, Amdt. 5
North Myrtle Beach, SC—Grand Strand, NDB RWY 23, Amdt. 9
Oneida, TN—Scott Muni, VOR/DME-A, Amdt. 3
Pulaski, TN—Abernathy Field, NDB RWY 15, Amdt. 3
Jacksonville, TX—Cherokee County, VOR/DME RWY 13, Amdt. 2
Jacksonville, TX—Cherokee County, NDB RWY 13, Amdt. 4
San Marcos, TX—San Marcos Muni, ILS RWY 12, Amdt. 2
Christiansted, St. Croix, VI—Alexander Hamilton, NDB RWY 9, Amdt. 12
Christiansted, St. Croix, VI—Alexander Hamilton, ILS RWY 9, Amdt. 5
Roanoke, VA—Roanoke Regional/Woodrum Field, LDA RWY 5, Amdt. 6
Roanoke, VA—Roanoke Regional/Woodrum Field, NDB RWY 33, Amdt. 7
Roanoke, VA—Roanoke Regional/Woodrum Field, ILS RWY 33, Amdt. 7
Sheboygan, WI—Sheboygan County Memorial, VOR RWY 3, Amdt. 5
Sheboygan, WI—Sheboygan County Memorial, VOR RWY 21, Amdt. 5
Sheboygan, WI—Sheboygan County Memorial, NDB RWY 21, Amdt. 6

. . . Effective April 9, 1987

Rome, GA—Richard B Russell, LOC/DME RWY 36, Orig
Maquoketa, IA—Maquoketa Muni, NDB RWY 15, Amdt. 2
Maquoketa, IA—Maquoketa Muni, RNAV RWY 33, Orig.

. . . Effective February 27, 1987

St. Mary's, AK—St. Mary's, NDB/DME RWY 16, Amdt. 1

. . . Effective February 24, 1987

Charlotte, NC—Charlotte/Douglas Intl, LOC BC RWY 23, Amdt. 6
Charlotte, NC—Charlotte/Douglas Intl, NDB RWY 5, Amdt. 30
Charlotte, NC—Charlotte/Douglas Intl, NDB RWY 23, Amdt. 6
Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 5, Amdt. 32
Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 18R, Amdt. 5
Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 36L, Amdt. 10
Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 36R, Amdt. 2
Charlotte, NC—Charlotte/Douglas Intl, RADAR-1, Amdt. 19

The FAA published an Amendment in Docket No. 25193, Amdt. No. 1341 to Part 97 of the Federal Aviation Regulations (Vol 52 FR No. 39 Page 5949; dated Friday, February 27, 1987) under Section 97.33 effective 9 APR 87, which is hereby amended as follows:

Mobile, AL—Bates Field, RNAV RWY 9, Orig *should read*
Mobile, AL—Bates Field, RNAV RWY 9, Orig., CANCELLED.

The FAA published an Amendment in Docket No. 25193, Amdt. No. 1341 to Part 97 of the Federal Aviation Regulations (Vol 52 FR No. 39 Page 5949; dated Friday, February 27, 1987) under Section 97.33 effective 12 MAR 87, which is hereby amended as follows:

Lake Charles, LA—Lake Charles Muni, LOC BC RWY 33, Amdt. 17, Eff 12 MAR 87, *should read*
Lake Charles, LA—Lake Charles Muni, LOC BC RWY 33, Amdt. 17, Eff 12 FEB 87,

The FAA published an Amendment in Docket No. 25193, Amdt. No. 1341 to Part 97 of the Federal Aviation Regulations (Vol 52 FR No. 39 Page 5949; dated Friday, February 27, 1987) under Section 97.25 effective 9 APR 87, which is hereby amended as follows:

Tulsa, OK—Tulsa Intl, RNAV RWY 17L, Amdt. 3, Eff 9 APR 87, CANCELLED, is hereby rescinded.
Tulsa, OK—Tulsa Intl, RNAV RWY 35R, Amdt. 2, Eff 9 APR 87, CANCELLED, is hereby rescinded.

[FR Doc. 87-5634 Filed 3-16-87; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Federal Old-Age, Survivors, and Disability Insurance Benefits; Revision of Appendices, Tables, and Lists

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: In this final regulation, we update various appendices, tables, and lists in 20 CFR Part 404. All update information is based on determinations previously published in the Federal Register.

DATES: These regulations are effective on March 17, 1987. The determinations on which these regulations are based were effective on the date they were published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Duane Heaton, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-6629.

SUPPLEMENTARY INFORMATION:

Background

Part 404 of 20 CFR contains various appendices, tables, and lists that show quarter of coverage amounts, average of total wages, benefit formulas, minimum Social Security earnings to qualify for a year of coverage after 1950 for purposes of the special minimum primary insurance amount, special minimum primary insurance amount and related maximum family benefits, percentage of increases in the primary insurance amount, the contribution and benefit base amounts, list of countries under the Treasury Department alien payment restriction, and the list of countries that have been determined to meet the treaty and social insurance or pension system exceptions to the alien nonpayment provisions of section 202(t) of the Social Security Act (the Act). The appendices, tables, and lists in the CFR have not been updated for years and, therefore, do not contain current information.

Revision Information

In this final regulation, we revise various appendices, tables, and lists in 20 CFR Part 404 by using information that we previously published in the Federal Register. The only exception is the list of countries under Treasury Department alien payment restrictions. This list is published by the Treasury Department. The latest list was published July 16, 1980 at 45 FR 47677. (See 31 CFR 211.1(a).)

1. The appendix to Subpart B is updated by adding quarter of coverage amounts for the years 1981 to 1986.

2. The appendices to Subpart C are updated by revising the introductory text to show that you may find the figures in the Federal Register on or about November 1 of each year, revising Appendices I, II, IV, V, and VI by adding yearly information, and by adding a new Appendix VII titled "Old-Law" Contribution and Benefit Base. Although the Appendix VII information is published in the Federal Register each year, this is the first time we have shown it as a table in 20 CFR Part 404.

Due to the amendment of section 215(i)(4) of the Act by section 12105 of Pub. L. 99-272, updated benefit amounts shown in Appendix III are no longer required to be published in the Federal Register. Appendix III is not updated with current benefit amounts. However, the introductory paragraphs explain how to compute the current benefit amount using the table shown and the percentage of increase in Appendix VI.

3. The contribution and benefit base amounts are shown in the text in Subpart E at § 404.429(c)(1) and in Subpart K at §§ 404.1047 and 404.1096. The information is updated and shown in table form for ease of reference.

4. The list of countries under the Treasury Department alien payment restriction in Subpart E at § 404.460(c)(3) has been updated to the most current information.

5. The list in Subpart E at § 404.463(a)(7) of countries which meet the social insurance or pension system exception to the alien non-payment provisions in section 202(t)(2) of the Act is updated. Also, § 404.463(b) is updated by removing Nicaragua from the list of countries covered by the "treaty obligation" exception. Nicaragua now qualifies under section 202(t)(2) of the Act and is included in the list at § 404.463(a)(7). These updates are based on determinations that the Director of the International Policy Staff published in the Federal Register.

Federal Register References

The dollar amounts, benefit formulas, benefit tables, and percentage amounts for the periods shown in this update of appendices, tables, and lists are contained in various notices published in the Federal Register as follows:

Notice Information:
Average of the Total Wages
Contribution and Benefit Base
Quarter of Coverage Amount
Retirement Test Exempt Amounts
Formulas for Computing Benefits
FR Reference:
51 FR 40256 (11/05/86)
50 FR 45558 (10/31/85)
49 FR 43775 (10/31/84)
48 FR 50414 (11/01/83)
47 FR 51003 (11/10/82)
46 FR 53791 (10/30/81)
45 FR 76252 (11/18/80)
44 FR 62956 (11/01/79)

Notice Information:
Cost-of-Living Increase in Benefits
FR Reference:
51 FR 40256 (11/05/86)
50 FR 45558 (10/31/85)
49 FR 43775 (10/31/84)
48 FR 27150 (06/13/83)
47 FR 20863 (05/14/82)

Notice Information:
Contribution and Benefit Base Under Pre-1977 Amendment Law
FR Reference:
51 FR 40256 (11/05/86)
50 FR 11562 (03/22/85)
49 FR 9959 (03/16/84)
48 FR 7813 (02/24/83)
47 FR 6098 (02/10/82)
46 FR 39477 (08/03/81)
45 FR 21715 (04/02/80)
44 FR 28881 (05/17/79)

Regulatory Procedures

The Department generally follows the Notice of Proposed Rulemaking and public comment procedures specified in the Administrative Procedure Act (5 U.S.C. 553(b)(B)) in the development of its regulations. That act provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(B), good cause exists for waiver of proposed rulemaking and public comment procedures on this regulation because we are only making technical changes which will not affect an individual's rights under title II and opportunity for prior public comment is unnecessary. Therefore, these amendments, which merely update the regulations to reflect determinations previously published in the Federal Register, are being issued as final rules.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291. These final regulations do not result in additional costs or savings or otherwise meet the threshold criteria of Executive Order 12291 because they merely update the appendices, tables, and lists with information previously published in the Federal Register in accordance with various provisions of

the Act. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations impose no reporting/recordkeeping requirement requiring the Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because these regulations will affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act of 1980, is not required.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security Retirement Insurance; 13.804 Social Security—Survivors Insurance.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure; Death benefits; Disability benefits; Old-Age, Survivors, and Disability.

Dated: January 29, 1987.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: February 19, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

For the reasons set out in the preamble, Subparts B, C, E, and K of Part 404, Chapter III of Title 20, Code of Federal Regulations, are amended as follows:

PART 404—[AMENDED]

1. The authority citation for Part 404, Subpart B continues to read as follows:

Authority: Secs. 205, 212, 213, 214, 216, 217, 223, and 1102 of the Social Security Act, 53 Stat. 1368, 64 Stat. 504 and 505, 68 Stat. 1080, 64 Stat. 512, 70 Stat. 815, and 49 Stat. 647; sec. 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 631. 42 U.S.C. 405, 412, 413, 414, 416, 417, 423, and 1302; U.S.C. Appendix.

2. The Appendix to Subpart B is amended by revising the table to read as follows:

Appendix to Subpart B—Quarter of Coverage Amounts for Calendar Years After 1978

* * * * *

Calendar year:	*Amount needed*
1979	$260
1980	290
1981	310
1982	340
1983	370
1984	390
1985	410
1986	440
1987	460

3. The authority citation for Part 404, Subpart C is revised to read as set forth below and the authority citations following the sections in Subpart C are removed.

Authority: Secs. 202, 205, 215, and 1102 of the Social Security Act; 49 Stat. 623 and 647, 53 Stat. 1368, 64 Stat. 506, 97 Stat. 76; 42 U.S.C. 402, 405, 415, and 1302.

4. The Appendices to Subpart C are amended as follows:

A. The three introductory paragraphs following the title "Appendices to Subpart C" are revised to read as follows:

Appendices to Subpart C

The following appendices contain data that are needed in computing primary insurance amounts. Appendix I contains "average of the total wages" figures, which we use to "index" a worker's earnings for purposes of computing his or her average indexed monthly earnings. Appendix II contains benefit formulas which we apply to a worker's average indexed monthly earnings to find his or her primary insurance amount. Appendix III contains the benefit table we use to find a worker's primary insurance amount from his or her average monthly wage. We use the figures in Appendix IV to find your years of coverage for years after 1950 for purposes of your special minimum primary insurance amount. Appendix V contains the table for computing the special minimum primary insurance amount. Appendix VI is a table of the percentage increases in primary insurance amounts since 1978. Appendix VII is a table of the "old-law" contribution and benefit base that would have been effective under the Social Security Act without enactment of the 1977 amendments.

The figures in the appendices are by law automatically adjusted each year. We are required to announce the changes through timely publication in the **Federal Register**. The only exception to the requirement of publication in the **Federal Register** is the update of benefit amounts shown in Appendix III. We update the benefit amounts for payment purposes but are not required by law to publish this extensive table in the **Federal Register**. We have not updated the table in Appendix III, but the introductory paragraphs at Appendix III explain how you can compute the current benefit amount.

When we publish the figures in the **Federal Register**, we do not change every one of these figures. Instead, we provide new ones for each year that passes. We continue to use the old ones for various computation purposes, as the regulations show. Most of the new figures for these appendices are required by law to be published by November 1 of each year. Notice of automatic cost-of-living increases in primary insurance amounts is required to be published within 45 days of the end of the applicable measuring period for the increase (see §§ 404.274 and 404.276). In effect; publication is required within 45 days of the end of the third calendar quarter of any year in which there is to be an automatic cost-of-living increase.

We begin to use the new data in computing primary insurance amounts as soon as required by law, even before we periodically update these appendices. If the data you need to find your primary insurance amount have not yet been included in the appendices, you may find the figures in the **Federal Register** on or about November 1.

B. Appendix I is amended by adding amounts for 1981 to 1985 to the table to read as follows:

Appendix I—Average of the Total Wages for Years After 1950

* * * * *

Calendar year:	*Average of the total wages*
* * * * *	
1981	13,773.10
1982	14,531.34
1983	15,239.24
1984	16,135.07
1985	16,822.51

C. Appendix II is amended by adding benefit formulas for 1983 to 1987 to the table to read as follows:

Appendix II—Benefit Formulas Used With Average Indexed Monthly Earnings

* * * * *

BENEFIT FORMULAS

Year you reach age 62—[1]	Formula
*	* * * *
1983	90 percent of the first $254 of AIME; plus 32 percent of the next $1,274 of AIME; plus 15 percent of AIME over $1,528.
1984	90 percent of the first $267 of AIME; plus 32 percent of the next $1,345 of AIME; plus 15 percent of AIME over $1,612.
1985	90 percent of the first $280 of AIME; plus 32 percent of the next $1,411 of AIME; plus 15 percent of AIME over $1,691.
1986	90 percent of the first $297 of AIME; plus 32 percent of the next $1,493 of AIME; plus 15 percent of AIME over $1,790.

BENEFIT FORMULAS—Continued

Year you reach age 62—[1]	Formula
1987	90 percent of the first $310 of AIME; plus 32 percent of the next $1,556 of AIME; plus 15 percent of AIME over $1,866.

[1] Or become disabled or die before age 62.

D. Appendix IV is amended by adding amounts for 1983 to 1987 to the table to read as follows:

Appendix IV—Special Minimum Primary Insurance Amount; Earnings Needed for a Year of Coverage After 1950

* * * * *

Years:	Amount
* * * * *	
1983	6,675
1984	7,050
1985	7,425
1986	7,875
1987	8,175

* * * * *

E. Appendix V is amended by revising the paragraph after the title and by adding tables for June 1982, December 1983, December 1984, December 1985, and December 1986 to read as follows:

Appendix V—Computing the Special Minimum Primary Insurance Amount and Related Maximum Family Benefits

These tables are based on section 215(a)(1)(C)(i) of the Social Security Act, as amended. They include the percent cost-of-living increase shown in Appendix VI for each effective date.

* * * * *

I.—Years of coverage	II.—Primary insurance amount	III.—Maximum family benefit
June 1982		
11	$17.50	$26.30
12	34.60	52.00
13	51.90	78.00
14	69.10	103.80
15	86.30	129.60
16	103.70	155.60
17	120.90	181.30
18	138.20	207.30
19	155.40	233.10
20	172.50	258.90
21	189.90	285.00
22	207.10	310.80
23	224.50	336.90
24	241.70	362.60
25	258.90	388.40
26	276.30	414.50
27	293.50	440.30
28	310.70	466.10
29	327.90	491.90
30	345.10	517.70
December 1983		
11	$18.10	$27.20
12	35.80	53.80
13	53.70	80.70
14	71.50	107.40
15	89.30	134.10
16	107.30	161.00
17	125.10	187.60
18	143.00	214.50
19	160.80	241.20
20	178.50	267.90
21	196.50	294.90
22	214.30	321.60
23	232.30	348.60
24	250.10	375.20
25	267.90	401.90
26	285.90	429.00
27	303.70	455.70
28	321.50	482.40
29	339.30	509.10
30	357.10	535.80
December 1984		
11	$18.70	$28.10
12	37.00	55.60
13	55.50	83.50
14	74.00	111.10
15	92.40	138.70
16	111.00	166.60
17	129.40	194.10
18	148.00	222.00
19	166.40	249.60
20	184.70	277.20
21	203.30	305.20
22	221.80	332.80
23	240.40	360.80
24	258.80	388.30
25	277.20	415.90
26	295.90	444.00
27	314.30	471.60
28	332.70	499.20
29	351.10	526.90
30	369.50	554.50
December 1985		
11	$19.20	$28.90
12	38.10	57.30
13	57.20	86.00
14	76.20	114.50
15	95.20	142.90
16	114.40	171.70
17	133.40	200.10
18	152.50	228.80
19	171.50	257.30
20	190.40	285.70
21	209.60	314.60
22	228.60	343.10
23	247.80	371.90
24	266.80	400.30
25	285.70	428.70
26	305.00	457.70
27	324.00	486.20
28	343.00	514.60
29	361.90	543.20
30	380.90	571.60
December 1986		
11	$19.40	$29.20
12	38.50	58.00
13	57.90	87.10
14	77.10	115.90
15	96.40	144.70
16	115.80	173.90
17	135.10	202.70
18	154.40	231.70
19	173.70	260.60
20	192.80	289.40
21	212.30	318.60
22	231.50	347.50
23	251.00	376.70
24	270.20	405.50
25	289.40	434.20
26	308.90	463.60
27	328.20	492.50
28	347.40	521.20
29	366.60	550.20
30	385.80	579.00

* * * * *

F. Appendix VI is amended by adding percentage and kind of increase information for June 1982, December 1983, December 1984, December 1985, and December 1986, to the table to read as follows:

Appendix VI—Percentage of Increases in Primary Insurance Amounts Since 1978

Effective date	Percentage of increase	Kind of increase
* * * * *		
06/82	7.4	Automatic
12/83	3.5	Do.
12/84	3.5	Do.
12/85	3.1	Do.
12/86	1.3	Do.

G. Appendix VII is added to read as follows:

Appendix VII—"Old-Law" Contribution and Benefit Base

Explanation: We use these figures to determine the earnings needed for a year of coverage for years after 1978 (see § 404.261 and Appendix IV). This is the contribution and benefit base that would have been effective under the Social Security Act without the enactment of the 1977 amendments.

Year	Amount
1979	$18,900
1980	20,400
1981	22,200
1982	24,300
1983	26,700
1984	28,200
1985	29,700
1986	31,500
1987	32,700

5. The authority citation for Part 404, Subpart E is revised to read as set forth below and the authority citations following the sections in Subpart E are removed.

Authority: Secs. 202, 203, 205, 209, 210, 215, 224, 229, 230, 1102, and 1127 of the Social Security Act; 49 Stat. 623 and 647, 53 Stat. 1368, 67 Stat. 18, 79 Stat. 379; sec. 5 of Reorganization Plan No. 1 of 1953; 42 U.S.C. 402, 403, 405, 409, 410, 415, 424, 429, 430, 1302, and 1327.

6. Section 404.429(c)(1) is revised to read as follows:

§ 404.429 Earnings; defined.

* * * * *

(c) * * *

(1) Remuneration that exceeds the calendar year amount as follows:

Calendar year	Amount
1951–54	$3,600
1955–58	4,200
1959–65	4,800
1966–67	6,600
1968–71	7,800
1972	9,000
1973	10,800
1974	13,200
1975	14,100
1976	15,300
1977	16,500
1978	17,700
1979	22,900
1980	25,900
1981	29,700
1982	32,400
1983	35,700
1984	37,800
1985	39,600
1986	42,000
1987	43,800

and

* * * * *

7. Section 404.460(c)(3) is amended by revising the title of the paragraph and the list of countries at the end of the paragraph to read as follows:

§ 404.460 Nonpayment of monthly benefits of aliens outside the United States.

* * * * *

(c) * * *

(3) *List of countries under Treasury Department alien payment restriction.* * * *

Albania
Cuba
Democratic Kampuchea (formerly Cambodia)
German Democratic Republic (East Germany and East Berlin)
North Korea
Vietnam

8. Section 404.463 is amended by revising the list of countries at the end of paragraph (a)(7) and the first sentence of paragraph (b) to read as follows:

§ 404.463 Nonpayment of benefits of aliens outside of the United States; "foreign social insurance system" and "treaty obligation" exemptions defined.

(a) * * *

(7) * * *

Antigua and Barbuda (effective November 1981)
Argentina (effective July 1968)
Austria (except from January 1958 through June 1961)
Bahamas, Commonwealth of the (effective October 1974)
Barbados (effective July 1968)
Belgium (effective July 1968)
Belize (effective September 1981)
Bolivia
Brazil
Burkina Faso, Republic of (formerly Upper Volta)
Canada (effective January 1966)
Chile
Colombia (effective January 1967)
Costa Rica (effective May 1962)
Cyprus (effective October 1964)
Czechoslovakia (effective July 1968)
Denmark (effective April 1964)
Dominica (effective November 1978)
Dominican Republic (effective November 1984)
Ecuador
El Salvador (effective January 1969)
Finland (effective May 1968)
France (effective June 1968)
Gabon (effective June 1964)
Grenada (effective April 1983)
Guatemala (effective October 1978)
Guyana (effective September 1969)
Iceland (effective December 1980)
Ivory Coast
Jamaica (effective July 1968)
Liechtenstein (effective July 1968)
Luxembourg
Malta (effective September 1964)
Mexico (effective March 1968)
Monaco
Netherlands (effective July 1968)
Nicaragua (effective May 1986)
Norway (effective June 1968)
Panama
Peru (effective February 1969)
Philippines (effective June 1960)
Poland (effective March 1957)
Portugal (effective May 1968)
San Marino (effective January 1965)
Spain (effective May 1966)
St. Christopher and Nevis (effective September 1983)
St. Lucia (effective August 1984)
Sweden (effective July 1966)
Switzerland (effective July 1968)
Trinidad and Tobago (effective July 1975)
Trust Territory of the Pacific Islands (Micronesia) (effective July 1978)
Turkey
United Kingdom
Western Samoa (effective August 1972)
Yugoslavia
Zaire (effective July 1961) (formerly Congo (Kinshasa)).

(b) *The "treaty obligation" exception.* It is determined that the Treaties of Friendship, Commerce, and Navigation now in force between the United States and the Federal Republic of Germany, Greece, the Republic of Ireland, Israel, Italy, and Japan, respectively, create treaty obligations precluding the application of § 404.460(a) to citizens of such countries; and that the Treaty of Friendship, Commerce, and Navagation now in force between the United States and the Kingdom of the Netherlands creates treaty obligations precluding the application of § 404.460(a) to citizens of that country with respect to monthly survivors benefits only. * * *

9. The authority citation for Part 404, Subpart K is revised to read as set forth below and the authority citations following the sections in Subpart K are removed.

Authority: Secs. 205, 209, 210, 211, 229, 230, 231, and 1102 of the Social Security Act; 49 Stat. 625 and 647, 53 Stat. 1368, 64 Stat. 492, 67 Stat. 631, 81 Stat. 833, 86 Stat. 416 and 1367; sec. 5 of Reorganization Plan No. 1 of 1953, 42 U.S.C. 405, 409, 410, 411, 429, 430, 431, and 1302; and 5 U.S.C. Appendix.

10. Section 404.1047 is revised to read as follows:

§ 404.1047 Annual wage limitation.

Payments made by an employer to you as an employee in a calendar year that are more than the annual wage limitation are not wages. The annual wage limitation is:

Calendar year	Wage limitation
1951–54	$3,600
1955–58	4,200
1959–65	4,800
1966–67	6,600
1968–71	7,800
1972	9,000
1973	10,800
1974	13,200
1975	14,100
1976	15,300
1977	16,500
1978	17,700
1979	22,900
1980	25,900
1981	29,700
1982	32,400

Calendar year	Wage limitation
1983	35,700
1984	37,800
1985	39,600
1986	42,000
1987	43,800

* * * * *

11. Section 404.1096 is amended by removing paragraphs (b)(1) (i) through (xvi) and replacing them with a table to read as follows:

§ 404.1096 Self-employment income.

* * * * *

(b) * * *

(1) * * *

Taxable year	Amount
Ending before 1955	$3,600
Ending in 1955 through 1958	4,200
Ending in 1959 through 1965	4,800
Ending in 1966 and 1967	6,600
Ending after 1967 and beginning before 1972	7,800
Beginning in 1972	9,000
Beginning in 1973	10,800
Beginning in 1974	13,200
Beginning in 1975	14,100
Beginning in 1976	15,300
Beginning in 1977	16,500
Beginning in 1978	17,700
Beginning in 1979	22,900
Beginning in 1980	25,900
Beginning in 1981	29,700
Beginning in 1982	32,400
Beginning in 1983	35,700
Beginning in 1984	37,800
Beginning in 1985	39,600
Beginning in 1986	42,000
Beginning in 1987	43,800

* * * * *

[FR Doc. 87-5276 Filed 3-16-87; 8:45 am]
BILLING CODE 4190-11-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 777

Mitigation of Environmental Impacts to Privately Owned Wetlands; Technical Amendments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This document contains technical amendments to clarify the evaluation of adverse impacts to privately owned wetlands so as to determine the extent of Federal-aid participation in the mitigation of such impacts. Because there was confusion in the use of the words "significant" and "significance" in the regulation, these words are being removed.

EFFECTIVE DATE: March 17, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Harold Aikens (202) 366-1372 or Mr. Michael Laska (202) 366-1383, both of the Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: This regulation was being interpreted in such a way that mitigation of an adverse environmental impact on a privately owned wetland was not eligible for Federal-aid participation unless the impact met a threshold of significance. The use of the words "significant" and "significance" in the regulation was confusing because it was being interpreted as it is defined in the Council on Environmental Quality (CEQ) regulations, 40 CFR Parts 1500-1508 (1986), as they apply to the level of documentation required by the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4221-4237 (1982). The evaluation of wetland impacts rests on ecological factors and the extent of the impact is not synonymous with the CEQ definition of significance. It has never been the intention of the FHWA to prohibit Federal-aid participation in wetland impact mitigation where the impacts are below the threshold that would require preparation of an EIS. To eliminate the confusion, the words "significant" and "significance" are being removed. This change will not affect the evaluation of impacts.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. Notice and opportunity for comment are not required because these amendments are technical in nature and make no substantive changes in the regulation. It is not anticipated that request for comments would result in the receipt of useful information and due to the technical nature of these amendments, the FHWA finds good cause to make this document effective in less than 30 days.

No economic impacts are anticipated as a result of this action. Accordingly, a full regulatory evaluation is not required. For the above reasons and under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant impact on a substantial number of small entities.

In consideration of the foregoing, the Federal Highway Administration amends Chapter I, Part 777 of Title 23, Code of Federal Regulations, as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 777

Grant programs—transportation, Highways and roads, Wetlands.

Issued on: February 25, 1987.

R.A. Barnhart,

Administrator.

The FHWA hereby amends 23 CFR Part 777 as follows:

PART 777—MITIGATION OF ENVIRONMENTAL IMPACTS TO PRIVATELY OWNED WETLANDS [AMENDED]

1. The authority citation for Part 777 continues to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; 23 U.S.C. 109(h), 138, and 315; E.O. 11990; DOT Order 5660.1A; 49 CFR 1.48(b).

§ 777.5 [Amended]

2. In § 777.5, the first sentence of paragraph (a) is amended by removing the word "significant".

§ 777.7 [Amended]

3. In § 777.7, paragraph (a)(2) is amended by removing the words "significance of the"; and paragraph (c) is amended by removing the words "of the significance" in the first sentence and substituting the word "importance" for the word "significance" in the last sentence.

[FR Doc. 87-5673 Filed 3-16-87; 8:45 am]
BILLING CODE 4910-22-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in floodprone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 USC 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E. O. 12127.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the 90-day period and the proposed base flood elevations have not been changed.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ARKANSAS	
Montgomery County (FEMA Docket No. 6902)	
Ouachita River:	
Approximately .90 mile downstream of confluence of Wheat Creek	*612
At confluence of West Spring Branch	*643
At confluence of Fulton Branch	*663
At confluence of Hackberry Creek	*686
Approximately .6 mile upstream of confluence of Cedar Creek	*726
Maps available for inspection at the County Courthouse, Mount Ida, Arkansas.	
Stone County (FEMA Docket No. 6902)	
White River:	
Confluence of Cayens Creek	*311
Confluence of Rocky Bayou	*322
Approximately 2.4 miles downstream of State Route 9 Bridge	*334
Approximately 850 feet downstream of confluence of Livingston Creek	*345
Approximately .4 mile downstream of confluence of Sugarloaf Creek	*363
At Baxter County boundary	*378
Livingston Creek:	
At confluence with White River	*345
Approximately 200 feet downstream of Old State Route 5 Bridge	*364
Approximately .8 mile upstream of Old State Route 5 Bridge	*392
Approximately 1.3 miles upstream of Old State Route 5 Bridge	*418
Approximately 1.8 miles upstream of Old State Route 5 Bridge	*442
South Sylamore Creek:	
At Swing Bridge Road	*340
Approximately .6 mile downstream of State Route 87 Bridge	*356
Approximately .4 mile upstream of State Route 87 Bridge	*365
Mill Prong Tributary:	
At confluence with Mill Prong	*610
Approximately .6 mile upstream of confluence with Mill Prong	*638
Approximately .8 mile upstream of confluence with Mill Prong	*659
Approximately 1.1 miles upstream of confluence with Mill Prong	*678
Approximately 1.7 miles upstream of confluence with Mill Prong	*711
Mill Prong:	
At confluence with Rocky Bayou	*485
Approximately .45 mile upstream of confluence with Rocky Bayou	*510
Approximately .8 mile upstream of confluence with Rocky Bayou	*532
Approximately 1.1 miles upstream of confluence with Rocky Bayou	*563
Approximately 1.4 miles upstream of confluence with Rocky Bayou	*585
At confluence of Mill Prong Tributary	*610
Rocky Bayou:	
Approximately 6.2 miles upstream of confluence with the White River	*401
At confluence of Wade Hollow	*414
Approximately 1,400 feet upstream of State Route 14 Bridge	*435
Approximately 1.2 miles upstream of State Route 14 Bridge	*465
At confluence with Mill Prong	*484
Maps available for inspection at the County Courthouse, Mountain View, Arkansas.	
CALIFORNIA	
Contra Costa County (unincorporated areas) (FEMA Docket No. 6902)	
Cascade Creek: 170 feet upstream of confluence with San Pablo Creek	*398
Deer Creek: 240 feet upstream of Balfour Road	*127
Donner Creek: 1,550 feet upstream of Marsh Creek Road	*462
East Antioch Creek: 860 feet upstream of Willow Avenue	*44
Kirker Creek: 50 feet upstream of State Highway 4	*64
Lauterwasser Creek: 50 feet upstream of Sleepy Hollow Lane	*455
Lawlor Creek: 120 feet downstream of Hanlon Way	*56
Marsh Creek: 20 feet downstream of Delta Road	*35
Marsh Creek: 200 feet downstream of Concord Avenue	*108
Miranda Creek: 130 feet upstream of Miranda Avenue	*333
Mitchell Creek: 400 feet east of intersection of Diablo Road with Tallyho Court along Diablo Road extended	*486
Moraga Creek: 20 feet downstream of El Camino Moraga	*563
Mt. Diablo Creek: 900 feet downstream of Port Chicago Highway	*20
Mt. Diablo Creek: 20 feet upstream of confluence with Mitchell Creek	*377
North Branch Stone Valley Creek: 130 feet upstream of Angela Avenue	*309
Old Kirker Creek: 160 feet downstream of the Atchison, Topeka and Santa Fe Railroad	*12
Overhill Creek: 320 feet upstream of Moraga Way	*484
Pacheco Creek: 300 feet upstream of the Atchison, Topeka and Santa Fe Railroad	*12
Payton Slough: 50 feet upstream of U.S. Highway 680	*9
Sand Creek: 20 feet downstream of Fairview Avenue	*90
San Pablo Creek: 110 feet upstream of Bear Creek Road	*340
San Pablo Creek: 530 feet downstream of Brookside Road	*522
San Ramon Creek: 100 feet downstream of Chaney Road	*212
San Ramon Creek: 75 feet upstream of Alamo Square Road	*261
Sans Crainte Creek: 160 feet upstream of Milton Avenue	*190
Shore Acres Creek: 200 feet upstream of Riverside Drive	*64
South Branch Moraga Creek: 1,200 feet upstream of confluence with Moraga Creek	*474
Stone Valley Creek: 90 feet downstream of Miranda Avenue	*331
Tice Creek: 20 feet downstream of Meadow Lane	*183
West Antioch Creek: 100 feet upstream of West 10th Street	*16
Maps are available for review at the Community Development Department, 651 Pine Street, 4th Floor, Martinez, California.	
Fontana (city), San Bernardino County (FEMA Docket No. 6730)	
San Sevaine Channel: At the intersection of Southern Pacific Railroad and Base Line Avenue, upstream of the railroad bridge	*1,301
Maps are available for review at the Department of Public Works, 8353 Sierra Avenue, Fontana, California.	
Isleton (city), Sacramento County (FEMA Docket No. 6902)	
Sacramento River: First Street	*9
Sevenmile Slough and Jackson Slough:	
Main Street	*7
Georgiana Drive	*7
Maps available for inspection at City Hall, 100 Second Street, Isleton, California.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Lodi (city), San Joaquin County (FEMA Docket No. 6902)	
Mokelumne River:	
At downstream corporate limits	*44
At Wyn Way extended	*45
About 300 feet upstream of Southern Pacific Railroad	*49
About 700 feet upstream of Interstate Highway 50	*51
At upstream corporate limits	*52
Maps available for inspection at City Hall, 221 West Pine Street, Lodi, California.	
Loma Linda (city), San Bernardino County (FEMA Docket No. 6902)	
San Timoteo Creek:	
At intersection with Parkland and Anderson Streets	*1,071
At intersection with Mountain View Avenue	*1,138
Maps are available for review at the Department of Public Works, 11128 Anderson Street, Loma Linda, California	
Madera (city), Madera County (FEMA Docket No. 6902)	
Fresno River:	
About 170 feet upstream of State Route 99	*264
About 400 feet upstream of North D Street	*267
About 190 feet downstream of North Lake Street	*271
At eastern corporate limits	*276
Maps are available for inspection at the Office of the City Engineer, City Hall, 205 West Fourth Street, Madera, California.	
Moreno Valley (city), Riverside County (FEMA Docket No. 6902)	
Edgemont B North Fork:	
About 80 feet upstream of Cottonwood Avenue	*1,529
About 100 feet upstream of Dracaea Avenue	*1,538
Just upstream of Eucalyptus Avenue	*1,549
Pigeon Pass Channel:	
At confluence with Sunnymead Storm Channel	*1,610
About 70 feet downstream of Sunnymead Boulevard	*1,630
About 900 feet upstream of Highway 60	*1,644
Sunnymead Storm Channel:	
About 800 feet upstream of Alessandro Boulevard	*1,568
About 50 feet downstream of Dracaea Avenue	*1,593
About 80 feet upstream Fir Avenue	*1,620
About 50 feet upstream of Perris Boulevard	*1,697
About 500 feet upstream Kitching Lane	*1,842
Maps available for inspection at the Office of the Deputy City Engineer, 12610 Heacock Street, Suite B208, Moreno Valley, California.	
Oceanside (city), San Diego County (FEMA Docket No. 6902)	
Pacific Ocean: On the shoreline, 200 feet southwest of the intersection of Pacific and Forster Streets	*11
Pacific Ocean: At Oceanside Harbor	*6
San Luis Rey River: 80 feet upstream of the center of the Atchison Topeka and Santa Fe Railroad crossing	*12
San Luis Rey River: 50 feet upstream of the center of the Murray Road crossing	*82
Garrison Creek: 100 feet upstream of the center of the El Camino Real crossing	*100
Buena Vista Creek: 60 feet upstream of the center of College Blvd	*174
Maps are available for review at the Deputy City Engineer's Office, 320 North Horne Street, Oceanside, California.	
Palmdale (city), Los Angeles County (FEMA Docket No. 6902)	
Big Rock Wash:	
900 feet downstream of Avenue L-4	*2,517
450 feet upstream of Avenue M East	*2,553
300 feet downstream of Avenue N East	*2,582
220 feet downstream of the upstream corporate limits	*2,631
Little Rock Wash A:	
400 feet upstream of the downstream corporate limits (Avenue L East)	*2,468
650 feet downstream of Avenue M East	*2,487
320 feet downstream of Avenue Q	*2,622
100 feet downstream of Southern Pacific Railroad	*2,736
1500 feet upstream of Avenue T	*2,776
1000 feet upstream of Avenue U	*2,862
Little Rock Wash B:	
400 feet upstream of convergence with Little Rock A	*2,700
150 feet downstream of Southern Pacific Railroad	*2,742
300 feet downstream of divergence with Little Rock A	*2,746
Little Rock Wash C:	
300 feet upstream of Avenue T	*2,759
1000 feet downstream of divergence with Little Rock A	*2,787
Maps available for inspection at City Hall, 708 E. Palmdale Boulevard, Palmdale, California.	
Pittsburg (city), Contra Costa County (FEMA Docket No. 6902)	
New York Slough: At the intersection of Los Medanos Street and East First Street	*7
Maps are available for inspection at City Hall, 2020 Railroad Avenue, Pittsburg, California.	
Tracy (city), San Joaquin County (FEMA Docket No. 6902)	
Old River: At the intersection of Industrial Way and Enterprise Place	*11
San Joaquin River (through Tom Paine Slough): At the intersection of Arbor Avenue and McArthur Drive	*20
Maps available for inspection at City Hall, 325 East Tenth Street, Tracy, California.	
West Hollywood (city), Los Angeles County (FEMA Docket No. 6902)	
Shallow Flooding:	
Vicinity of Rosewood Avenue and Norwich Drive from San Vincente Boulevard to just past Santa Monica Boulevard	#1
Vicinity of Grove Avenue and Curson Avenue between Raomaine and Detroit Streets	#1
Maps available for inspection at the Office of the City Engineer, 8611 Santa Monica Boulevard, West Hollywood, California	
COLORADO	
Aspen (city), Pitkin County (FEMA Docket No. 6730)	
Castle Creek: 70 feet downstream of West Hallam Street	*7,833
Maroon Creek: 240 feet downstream of State Highway 82	*7,772
Roaring Fork River: 240 feet downstream of N. Mill Street	*7,843
Maps are available for review at the Engineer's Office, 130 South Galena, 3rd Floor, Aspen, Colorado.	
Basalt (town), Pitkin County (FEMA Docket No. 6730)	
Roaring Fork River: 30 feet upstream of East Cottonwood Drive	*6,594
Fryingpan River: 20 feet upstream of South Cottonwood Drive	*6,607
Maps are available for review at the Town Hall, Basalt, Colorado.	
Pitkin County (unincorporated areas) (FEMA Docket No. 6730)	
Brush Creek: 30 feet upstream of State Highway 82 Bridge	*7,471
Castle Creek: 80 feet upstream of West Hallum Street Bridge	*7,837
Coal Creek: 20 feet upstream of State Highway 133 Bridge	*7,169
Crystal River: 60 feet upstream of North Redstone Bridge	*7,119
Crystal River: 60 feet upstream of Janeway Campground Bridge	*6,734
Hunter Creek: 55 feet upstream of Red Mountain Road Bridge	*7,837
Maroon Creek: 60 feet upstream of State Highway 82 Bridge	*7,779
Roaring Fork River: 80 feet upstream of Snowmass Creek Road Bridge	*6,851
Roaring Fork River: 75 feet upstream of Cemetery Land Bridge	*7,709
Roaring Fork River: 25 feet upstream of Hemann Road Bridge	*8,021
Snowmass Creek: 50 feet upstream of Snowmass Creek at Snowmass Village	*8,279
Snowmass Creek: 80 feet upstream of State Highway 82 Bridge	*6,853
Maps are available for review at the Pitkin County Asset Management Office, 0100 Lone Pine Road, Aspen, Colorado.	
Snowmass Village (town), Pitkin County (FEMA Docket No. 6730)	
Snowmass Creek: 0.23 miles downstream from Snowmass Creek Road	*8,246
Brush Creek: 180 feet upstream from eastern corporate limit of Snowmass Village	*7,859
Maps are available for review at the Town Hall, Snowmass Village, Colorado.	
CONNECTICUT	
Milford (city), New Haven County (FEMA Docket No. 6902)	
Beaver Brook:	
Approximately 40 feet downstream of Naugatuck Avenue	*10
At Concord Avenue, extended	*12
At first downstream crossing of Bridgeport Avenue (U.S. Route 1)	*35
At Grinnell Street	*45
Approximately 340 feet upstream of Plains Road	*97
Quirk's Pond:	
At confluence with Oyster River	*11
Upstream side of first downstream crossing of Brewster	*13
At Anderson Avenue	*25
Tumble Brook:	
At confluence with Indian River	*18
Approximately 550 feet downstream of Kindel Drive	*45
Approximately 120 feet downstream of San Mill Drive	*66
Approximately 265 feet upstream of Armore Road	*87
Karls Brook:	
Approximately 650 feet downstream of Boston Post Road	*11
Approximately 1,350 feet downstream of Swanson Drive	*32
Approximately 300 feet downstream of Colony Road	*59
Downstream side of Burnt Plains Road	*112
At upstream corporate limits	*118
Stubby Brook:	
At confluence with Indian River	*11
Downstream side of Buick Avenue	*19
At Locust Street	*47
At Pullman Drive	*87
At upstream corporate limits	*125
Maps available for inspection at the City Hall, Milford, Connecticut.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
New Milford (town), Litchfield County (FEMA Docket No. 6902)	
Housatonic River:	
Approximately 4,830 feet upstream of Boardman Bridge	*227
Downstream side of U.S. Route 7	*250
Approximately 820 feet downstream of upstream corporate limits	*278
Town Farm Brook:	
Upstream side of State Route 67	*470
Upstream side of McMahon Road	*578
Approximately 30 feet downstream of Reservoir #4 dam	*668
West Aspetuck River:	
Approximately 1,380 feet upstream of Clove Farm Road	*476
Approximately 1 mile upstream of Clove Farm Road	*497
Downstream side of Cherniske Road	*578
Approximately 260 feet downstream of upstream corporate limits	*581
Maps available for inspection at the Town Engineer's Office, Town Hall, 10 Main Street, New Milford, Connecticut.	
Sherman (town), Fairfield County (FEMA Docket No. 6902)	
Housatonic River:	
At downstream corporate limits	*250
Approximately 0.95 mile upstream of downstream corporate limits	*260
At confluence of Tenmile River	*275
Tenmile River:	
At confluence with Housatonic River	*275
Approximately 2,000 feet upstream of confluence with Housatonic River	*289
At upstream corporate limits	*294
Maps available for inspection at the Town Clerk's Office, Sherman, Connecticut.	
West Hartford (town), Hartford County (FEMA Docket No. 6902)	
North Branch Park River:	
Downstream corporate limits	*59
Upstream corporate limits	*86
Piper Brook:	
At confluence with Trout Brook	*48
Upstream corporate limits	*49
East Branch Trout Brook:	
Upstream side of Asylum Avenue	*89
Approximately 250 feet upstream of Albany Avenue	*104
Approximately 750 feet upstream of Albany Avenue	None
St. Joseph's Brook:	
At confluence with East Branch Trout Brook	*89
Approximately .33 mile upstream of confluence with East Branch Trout Brook	*96
Tumbledown Brook:	
Downstream corporate limits	*133
Approximately 0.68 mile upstream of Still Road	*141
Downstream side of Mountain Road	*179
Approximately .4 mile upstream of Mountain Road	*218
Hart Meadow Brook:	
At confluence with Trout Brook	*115
Upstream side of Bugbee Dam	*156
Upstream side of Flagg Road	*159
Upstream side of Lovelace Drive	*203
Approximately 600 feet upstream of Lovelace Drive	*227
Approximately 0.24 mile downstream of Winchester Drive	*259
Approximately 480 feet downstream of Winchester Drive	*300
Upstream side of Winchester Drive	*319
Upstream side of Watercliff Circle	*345
Downstream side of the upstream Renbrook School bridge culvert	*391
Approximately .37 mile upstream of the upstream Renbrook School Road culvert	*400
Approximately 0.54 mile upstream of the upstream Renbrook School Road culvert	*428
Rockledge Brook:	
At confluence with Trout Brook	*73
Upstream side of South Main Street	*113
Upstream side of Pleasant Hill Drive	*128
Upstream side of Elmfield Street	*143
Approximately .38 mile upstream of Huckleberry Lane	*157
Wood Pond Brook:	
At confluence with Trout Brook	*164
Approximately 60 feet downstream of Mountain Road	*173
Downstream side of Tunxis Road	*175
Tumbledown Brook Tributary:	
Downstream corporate limits	*142
Upstream corporate limits	*152
Maps available for inspection at the Town Planning Office, West Hartford, Connecticut.	
FLORIDA	
Blountstown (city), Calhoun County (FEMA Docket No. 6902)	
Apalachicola River:	
About 2.5 miles downstream of State Road 20	*53
About 1.25 miles downstream of State Road 20	*54
Sutton Creek:	
About 2500 feet downstream of State Road 71	*53
About 3000 feet upstream of Charley E. Johns Street	*62
Shallow, flooding caused by ponding of rainfall: About 450 feet east of intersection of Marie Avenue and Charley E. Johns Street	*54
Maps available for inspection at the City Hall, 125 West Central Avenue, Blountstown, Florida.	
Calhoun County (unincorporated areas), (FEMA Docket No. 6902)	
Apalachicola River:	
About 2.5 miles downstream of State Road 20	*53
Just downstream of State Road 20	*54
Maps available for inspection at the County Clerk's Office, County Courthouse, Blountstown, Florida.	
Eustis (city), Lake County (FEMA Docket No. 6709)	
Lake Dot: Within community	*70
Lake Eustis: Within community	*66
Lake Gracie: Within community	*65
Lake Hermosa: Within community	*74
Lake Joanna: Within community	*155
Lake Louise: Within community	*80
Lake Maggie: Within community	*155
Lake Nettie: Within community	*65
Ponding Area H5B: Within community	*71
Lake Willie: Within community	*105
West Crooked Lake System (East and West Crooked Lakes): Within community	*74
Lake Woodward: Within community	*75
Lake Yale: Within community	*61
Maps available for inspection at the City Manager's Office; City Building, P.O. Box 68, Eustis, Florida.	
Hamilton County (unincorporated areas) (FEMA Docket No. 6902)	
Suwannee River:	
At confluence of Withlacoochee River	*66
At northern state boundary	*108
Withlacoochee River:	
At mouth	*66
At northern state boundary	*93
Alapaha River:	
At mouth	*70
At northern state boundary	*95
Maps available for inspection at the County Clerk's Office, County Courthouse, Jasper, Illinois.	
Madison County (unincorporated areas) (FEMA Docket No. 6902)	
Suwannee River:	
About 1.4 miles downstream of confluence of Springhead Creek	*60
At confluence of Withlacoochee River	*66
Withlacoochee River:	
At mouth	*66
About 1.0 mile upstream of abandoned railroad (bridge abutments)	*97
Aucilla River:	
About 8.2 miles downstream of U.S. Route 19	*46
About 2.6 miles upstream of U.S. Route 90	*83
Maps available for inspection at the County Clerk's Office, County Courthouse, Madison, Florida.	
White Springs (town), Hamilton County (FEMA Docket No. 6902)	
Suwannee River:	
About 0.9 mile downstream of County Highway 136	*86
About 0.9 mile downstream of U.S. Route 41	*87
Maps available for inspection at the Town Hall, White Springs, Florida.	
GEORGIA	
Chatsworth (city), Murray County, (FEMA Docket No. 6902)	
Holly Creek:	
About 800 feet downstream of Louisville and Nashville Railroad	*717
About 1,100 feet upstream of confluence of Town Branch	*732
Town Branch:	
Just upstream of confluence with Holly Creek	*730
Just downstream of Long Street	*745
Maps available for inspection at the City Hall, P.O. Box 516, Chatsworth, Georgia.	
Garden City (city), Chatham County (FEMA Docket No. 6696)	
Atlantic Ocean:	
Along Pipe Makers Canal downstream of State Route 21	*12
At State Route 21 over Dundee Canal	*12
Pipe Makers Canal:	
Just upstream of State Route 21	*12
Just downstream of Dean Forest Road	*12
Savannah & Ogeechee Canal:	
Just upstream of Seaboard Coast Line Railroad	*12
About 1.1 miles upstream of Seaboard Coast Line Railroad	*12
Salt Creek Tributary:	
About 0.9 mile downstream of U.S. Route 80	*12
About 1600 feet upstream of U.S. Route 80	*15
Maps available for inspection at the City Hall, Garden City, Georgia.	
Jefferson (city), Jackson County (FEMA Docket No. 6902)	
Curry Creek:	
About 0.66 mile downstream of State Route 15	*712
Just downstream of Kissam Avenue	*727
Just upstream of Kissam Avenue	*739
About 1.14 miles upstream of State Route 15	*741
Maps available for inspection at the City Hall and Jackson County Building Inspection Department, County Administration Building, P.O. Box 37, Jefferson, Georgia.	
Port Wentworth (city), Chatham County (FEMA Docket No. 6696)	
Savannah River: Within community	*12
Atlantic Ocean:	
From intersection of U.S. Route 17 and Grange Road to U.S. Route 17 bridge over Savannah River	*11
About 0.5 mile south of intersection of Grange Road and U.S. Route 17	*12
Maps available for inspection at the Building Inspector's Office, City Hall, Port Wentworth, Georgia.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Thunderbolt (town), Chatham County, (FEMA Docket No. 6696)	
Atlantic Ocean:	
At intersection of Whatley Avenue and Victory Drive	*12
At U.S. Route 80 bridge over Grays Creek	*14
Maps available for inspection at the City Hall, Thunderbolt, Georgia.	
Vernonburg (town), Chatham County, (FEMA Docket No. 6696)	
Atlantic Ocean: Within community	*12
Maps available for inspection at the Intendant's Home, 12820 Rockwell Avenue, Savannah, Georgia.	
INDIANA	
Lagro (town), Wabash County, (FEMA Docket No. 6730)	
Wabash River:	
About 3000 feet downstream of America Road	*674
About 2300 feet upstream of America Road	*679
Maps available for inspection at the Town Hall, P.O. Box 305, Lagro, Indiana.	
MAINE	
Gouldsboro (town), Hancock County (FEMA Docket No. 6902)	
Atlantic Ocean:	
Entire shoreline of West Bay within community	*11
Shoreline of Lobster Island	*11
Approximately 1,000 feet east of Jetteau Point	*16
Shoreline at Point Francis	*13
South shoreline of Sheep Island	*17
Entire shoreline of Hog Island	*11
Shoreline at Cranberry Point Road extended	*17
Shoreline at Prospect Harbor Point	*20
Entire shoreline of Long Porcupine Island	*11
Maps available for inspection at the Municipal Building, Prospect Harbor, Maine.	
MARYLAND	
Prince George's County (unincorporated areas) (FEMA Docket No. 6703)	
Potomac River:	
Downstream County boundary	*9
Upstream County boundary	*10
Piscataway Creek:	
At confluence with Potomac River	*9
Approximately 150 feet upstream of Indian Head Highway	*18
Upstream side of Piscataway Road	*23
Approximately 125 feet upstream of Wind Brook Drive	*49
Upstream side of Brandywine Road	*100
Approximately 125 feet upstream of Surratts Road	*137
At confluence of House Branch	*155
Approximately 120 feet upstream of Woodyard Road	*193
Tinkers Creek:	
At confluence with Piscataway Creek	*22
Upstream side of Rickety Bridge Farm Road	*47
Approximately 1.6 miles downstream of Steed Road	*100
Upstream side of Steed Road	*143
Upstream side of Temple Hills Road	*189
At confluence with Meetinghouse Branch	*215
Pea Hill Branch:	
At confluence with Tinkers Creek	*143
Approximately 100 feet upstream of Temple Hills Road	*170
Approximately 130 feet upstream of Old Branch Avenue	*209
Burch Branch:	
At confluence with Piscataway Creek	*48
Approximately 175 feet upstream of Springfield Road	*96
Meetinghouse Branch:	
At confluence with Tinkers Creek	*215
Approximately 315 feet upstream of Old Branch Avenue	*238
Broad Creek:	
At confluence with Potomac River	*10
At confluence with Henson Creek	*19
Henson Creek:	
At confluence with Broad Creek	*19
Approximately 50 feet upstream of Tucker Road	*70
Approximately 100 feet upstream of Brinkley Road	*119
Upstream side of Interstate 95 (Capital Beltway) downstream crossing	*148
Upstream side of Suitland Road	*197
Approximately 100 feet upstream of Interstate 95 (Capital Beltway) upstream crossing	*236
Hunters Mill Branch:	
At confluence with Broad Creek	*19
Upstream side of Indian Head Highway	*39
Approximately 1.1 miles upstream of Indian Head Highway	*105
Unnamed Tributary to Broad Creek:	
At confluence with Broad Creek	*10
Approximately 1,650 feet downstream of Parkton Street	*33
Mattawoman Creek:	
At downstream County boundary	*83
Upstream side of Bealle Hill Road	*100
Upstream side of Gardener Road	*152
Approximately .21 mile downstream of Cedarville Road	*189
Timothy Branch:	
At confluence with Mattawoman Creek	*170
Upstream side of Crain Highway	*187
Approximately 1.35 miles upstream of Crain Highway	*200
Approximately 1,000 feet upstream of Brandywine Road	*218
Oxon Run:	
At downstream County boundary	*11
At confluence of Barnaby Run	*22
Approximately 1,220 feet downstream of 23rd Parkway	*107
Upstream side of Branch Avenue	*151
Upstream side of Suitland Road	*175
Approximately .24 mile upstream of Pennsylvania Avenue	*203
Patuxent River:	
At downstream County boundary	*7
Upstream side of State Route 214	*28
Approximately 0.1 mile upstream of Conrail	*68
Approximately 0.1 mile upstream of Baltimore Washington Parkway	*115
Downstream side of Rocky Gorge Dam	*172
Western Branch:	
At confluence with Patuxent River	*8
Upstream side of State Route 4	*25
Upstream side of State Route 202	*61
Approximately .43 mile upstream of Lottsford Road	*92
Collington Branch:	
At confluence with Western Branch	*28
Upstream side of Oak Grove Road	*62
Upstream side of Mount Oak Road	*100
Approximately 500 feet downstream of Conrail	*120
Charles Branch:	
At confluence with Western Branch	*8
Approximately 120 feet upstream of Conrail	*43
Upstream side of Crain Highway	*75
Approximately 130 feet upstream of Woodyard Road	*150
Southwest Branch:	
At confluence with Western Branch	*59
Upstream side of Harry S. Truman Drive	*86
Approximately 200 feet upstream of Interstate 95 (Capital Beltway)	*116
Approximately 120 feet upstream of Walker Mill Road	*145
Approximately .25 mile downstream of Kipling Parkway	*193
Lottsford Branch:	
At confluence with Western Branch	*92
Upstream side of Chantilly Lane	*108
Approximately 260 feet upstream of Annapolis Road	*129
Northeast Branch Western Branch:	
At confluence with Western Branch	*74
Approximately 270 feet upstream of Woodmore Road	*106
Folly Branch:	
At confluence with Lottsford Branch	*98
Upstream side of U.S. Route 50	*108
Upstream side of Baltimore Lane	*115
Approximately 300 feet upstream of Lanham Severn Road	*127
Bald Hill Branch:	
At confluence with Bald Hill Branch	*92
Upstream side of George N. Palmer Highway	*115
Upstream side of State Route 450	*124
Approximately 0.2 mile upstream of Good Luck Road	*142
Federal Spring Branch:	
At confluence with Western Branch	*29
Upstream side of State Route 408	*37
pproximately 170 feet upstream of Ritchie Marlboro Road	*65
Ritchie Branch:	
At confluence with Southwest Branch	*145
Upstream side of Ritchie Road	*161
Approximately .42 mile upstream of Ritchie Road	*170
Horsepen Branch:	
At confluence with Patuxent River	*51
Upstream side of Laurel Bowie Road	*77
Upstream side of High Bridge Road	*100
Approximately 550 feet upstream of Hillmeade Road	*129
Bear Branch:	
At downstream County boundary	*145
At most upstream County boundary	*194
Approximately 70 feet upstream of Van Dusen Road	*223
Approximately 220 feet upstream of Contee Road	*236
Anacostia River:	
At downstream County boundary	*16
Upstream side of Bladensburg Road	*17
At confluence with Northeast and Northwest Branch Anacostia River	*18
Northeast Branch Anacostia River:	
At confluence with Anacostia River	*18
Upstream side of Riverdale Road	*32
At confluence with Indian Creek and Paint Branch	*47
Northwest Branch Anacostia River:	
At confluence with Anacostia River	*18
Approximately 50 feet upstream of Queens Chapel Road	*35
Upstream side of East West Highway	*54
Upstream side of Riggs Road	*92
Approximately 140 feet upstream of Piney Branch Road	*120
Paint Branch:	
At confluence with Northeast Branch Anacostia River	*47
Upstream side of Metzerott Road	*75
Upstream side of Interstate 95 (southbound bridge)	*114
Approximately 500 feet downstream of County boundary	*156
Indian Creek:	
At confluence with Northeast Branch Anacostia River	*47
Upstream side of Cherrywood Lane	*72
Upstream side of Old Baltimore Pike	*107
Upstream side of Ammendale Road	*166
Approximately 400 feet upstream of Interstate 95	*194
Beaverdam Creek:	
At confluence with Anacostia River	*16
Upstream side of CONRAIL (2nd upstream crossing)	*28
Upstream side of Beaver Road	*41
Upstream side of Old Landover Road	*53
Upstream side of CONRAIL (7th upstream crossing)	*74
Approximately 300 feet upstream of John Hanson Highway	*75
Little Paint Branch:	
At confluence with Paint Branch	*84
Upstream side of Interstate 95 (Capital Beltway)	*106
Upstream side of Sellman Road	*134
Upstream side of Briggs Chaney Road	*196
Approximately 400 feet upstream of Greencastle Road	*243

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Sligo Creek:	
At confluence with Northwest Branch Anacostia River	*41
Upstream side of East West Highway	*73
Upstream side of New Hampshire Avenue	*101
At upstream County boundary	*135
Brier Ditch:	
At confluence with Northeast Branch Anacostia River	*39
Approximately 140 feet upstream of Baltimore Washington Parkway	*58
Approximately 230 feet upstream of Auston Road	*62
Long Branch:	
At confluence with Sligo Creek	*104
Approximately 0.31 mile upstream of confluence with Sligo Creek	*140
At upstream County boundary	*164
Cabin Branch:	
At confluence with Beaverdam Creek	*30
Approximately 100 feet upstream of Sheriff Road	*60
Upstream side of Seat Pleasant Road	*74
Approximately 220 feet upstream State Route 214	*105
Ammendale Branch:	
At confluence with Indian Creek	*123
Upstream side of Ammendale Road	*141
Approximately 480 feet upstream of Virginia Manor Road	*172
Muirkirk Branch:	
At confluence with Indian Creek	*120
Approximately 0.55 mile upstream of confluence with Indian Creek	*127
Barnaby Run:	
At confluence with Oxon Run	*22
Upstream side of Southern Avenue	*42
At upstream County boundary	*49
Crows Branch:	
Approximately 720 feet downstream of Bowie Road	*139
At U.S. Route 1	*153
Maps available for inspection at the Construction Standards Division, County Administration Building, Upper Marlboro, Maryland.	
MASSACHUSETTS	
Canton (town), Norfolk County (FEMA Docket No. 6902)	
Massapoag Brook:	
At upstream corporate limits	*147
Downstream side of Washington Street	*131
Downstream side of Walnut Street	*101
Confluence with Forge Pond	*95
Upper Pequid Brook:	
Approximately 1,080 feet upstream of Turnpike Street	*158
At confluence with Resevoir Pond	*148
Lower Pequid Brook:	
Downstream side of Pleasant Street	*140
Downstream side of Sherman Street	*95
Ponkapoag Brook:	
Downstream side of Turnpike Street	*134
Upstream side of Hubbard Street	*104
Approximately 1,500 feet east of intersection of Mohawk Road and Pecunit Street	*58
Downstream side of Golf Course Dam	*52
At confluence with Neponset River	*47
Beaver Meadow Brook:	
Downstream side of Pleasant Street	*156
Upstream side of Factory Pond Dam	*136
Confluence with Bolivar Pond	*107
Bolivar Pond: Entire shoreline	*107
Forge Pond: Entire shoreline	*95
Resevoir Pond: Entire shoreline	*148
Maps available for inspection at the Planning Board, Canton, Massachusetts.	
Dover (town), Norfolk County (FEMA Docket No. 6902)	
Trout Brook:	
Upstream side of Haven Street bridge	*110
Upstream side of Springdale Avenue bridge	*113
Approximately 790 feet downstream of Channings Pond	*114
Rocky Brook:	
At confluence with Trout Brook	*113
Downstream side of CONRAIL bridge crossing	*148
Maps available for inspection at the Town Clerk's Vault, Dover, Massachusetts.	
Mattapoisett (town), Plymouth County (FEMA Docket No. 6902)	
Buzzard's Bay:	
Shoreline at Point Road, extended	*21
Shoreline at Daisy Way, extended	*20
Shoreline at David Street, extended	*18
Intersection of Pico Beach Road and Pig Wacket Lane	*16
Intersection of Wildwood Terrace and U.S. Route 6	*14
Maps available for inspection at the Building Inspector's Office, Town Hall, 16 Main Street, Mattapoisett, Massachusetts.	
Norton (town), Bristol County (FEMA Docket No. 6902)	
Wading River:	
Approximately 150 feet downstream of Camp Read Road	*98
Upstream side of Walker Street	*104
At upstream corporate limits	*109
Canoe River:	
At confluence with Winnecunnet Pond	*74
Approximately 1,000 feet upstream of upstream crossing of Interstate Route 495 exit ramp	*80
Approximately 200 feet downstream of Newland Street	*86
Goose Branch Brook:	
At confluence with Wading River	*83
Downstream side of Dean Street	*88
Approximately 1,100 feet upstream of John Scott Boulevard	*95
Upstream side of West Hodges Street	*107
Maps available for inspection at the Planning Board, Norton, Massachusetts.	
Randolph (Town), Norfolk County (FEMA Docket No. 6902)	
Martin Brook:	
Approximately 1,000 feet downstream of Teed Drive	*108
Downstream side of North Street	*115
Approximately 160 feet upstream of Paine Road	*130
Upstream side of Oak Street	*133
Cochato River:	
Downstream side of first downstream CONRAIL crossing	*107
Approximately 1,300 feet upstream of confluence of Glovers Brook	*108
Approximately 240 feet upstream of confluence of Mary Lee Brook	*111
Glovers Brook:	
At confluence with Cochato River	*108
Upstream side of North Street	*117
At CONRAIL	*156
Approximately 975 feet upstream of Warren Street	*181
Mary Lee Brook:	
At confluence with Cochato River	*111
At Union Street	*128
At South Street	*148
At Joyce Street	*196
Upstream side of South Main Street	*210
Unnamed Tributary to Mary Lee Brook:	
Confluence with Mary Lee Brook	*117
Upstream side of Prospect Avenue culvert	*131
Upstream side of Union Street culvert	*165
Maps available for inspection at the Town Hall, Crawford Square, Randolph, Massachusetts.	
Taunton (city), Bristol County (FEMA Docket No. 6902)	
Segreganset River:	
Downstream corporate limits	*83
Upstream side of Winthrop Street	*85
Upstream side of Laneway Street	*93
Upstream side of Globe Street	*101
Cobb Brook:	
Confluence with Taunton River	*13
Downstream side of Briggs Street	*22
Upstream side of Oak Street	*34
Downstream side of Tremont Street	*50
Lake Sabbatia: Entire shoreline within community	*68
Watson Pond: Entire shoreline within community	*65
Mill Pond: Entire shoreline within community	*62
Maps available for inspection with Mr. Russell Heap, Zoning Enforcement Officer, 15 Summer Street, Taunton, Massachusetts.	
MICHIGAN	
Niles (city), Berrien and Cass Counties (FEMA Docket No. 6902)	
St. Joseph River:	
About 0.68 mile downstream of Conrail	*644
About 680 feet upstream of confluence of West Tributary	*660
Dowagiac River:	
About 850 feet downstream of U.S. Highway 31	*644
About 1,640 feet upstream of Abandoned Railroad	*645
West Tributary:	
At mouth	*660
Just downstream of Chicago Road	*698
Just upstream of Chicago Road	*703
About 430 feet upstream of footbridge	*706
Maps available for inspection at the City Hall, Niles, Michigan.	
NEW HAMPSHIRE	
Warner (town), Merrimack County (FEMA Docket No. 6902)	
Warner River:	
Approximately 460 feet downstream of the downstream corporate limits	*364
On downstream side of State Route 127	*389
Confluence of Schoodac Brook	*398
Upstream side of southbound Interstate Route 89	*409
Upstream side of Mill Street	*416
Upstream of southbound Interstate Route 89	*422
Upstream side of Wagner Dam	*447
At 2nd upstream corporate limits crossing	*470
At downstream crossing at State Route 103	*508
Upstream side of dam	*520
Approximately 0.6 mile upstream of dam	*544
Approximately 0.9 mile upstream of dam	*565
Approximately 0.5 mile downstream of Melvin Road	*600
Downstream side of Melvin Road	*629
Upstream corporate limits	*642
Maps available for inspection at the Selectmen's Office, Town Hall, Warner, New Hampshire.	
NEW JERSEY	
Randolph (township), Morris County (FEMA Docket No. 6719)	
Rockaway River:	
Downstream corporate limits	*542
Downstream side of Dover-Rockaway Road	*548
Upstream corporate limits	*553
Maps available for inspection at 502 Millbrook Avenue, Randolph, New Jersey.	
NEW YORK	
Amityville (village), Suffolk County (FEMA Docket No. 6902)	
Great South Bay:	
At confluence of Woods Creek	*10
At Norman Avenue (extended)	*9
At intersection of Grand Central Avenue and Griffing Avenue	*7
Maps available for inspection at the Village Hall, 21 Green Avenue, Amityville, New York.	
Babylon (village), Suffolk County (FEMA Docket No. 6902)	
Great South Bay:	
At Bayview Avenue (extended)	*9

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At intersection of Kingsland Place and Cedar Lane	*7
Maps available for inspection at 153 West Main Street, Babylon, New York 11702.	
Carmel (town), Putnam County (FEMA Docket No. 6730)	
Muscoot River:	
Downstream corporate limits	*513
At confluence of Secor Brook	*513
Secor Brook:	
At confluence with Muscoot River	*513
Approximately 1,500 feet upstream of Secor Lake Road	*569
Plum Brook:	
Downstream corporate limits	*499
At Teakettle Spout Road	*605
Approximately 100 feet upstream of most upstream dam	*653
Michael Brook:	
At confluence with Croton Falls Reservoir	*306
At Kelley Road	*353
Approximately 1,165 feet upstream of Old New York Route 6	*418
Approximately .4 mile upstream of Fair Street	*507
At upstream corporate limits	*590
Middle Branch Croton River:	
At downstream corporate limits	*495
At upstream corporate limits	*510
Maps available for inspection at the Town Clerk's Office, Town Hall, Mahopac, New York.	
Crown Point (town), Essex County (FEMA Docket No. 6902)	
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Town Hall, Monitor Bay Park, Crown Point, New York.	
Lindenhurst (village), Suffolk County (FEMA Docket No. 6902)	
Great South Bay:	
Shoreline at South Bay Street (extended)	*9
Shoreline of Strongs Creek at South Ninth Street (extended)	*7
Maps available for inspection at the Building Department, 430 South Wellwood Avenue, Lindenhurst, New York 11757.	
Philipstown (town), Putnam County (FEMA Docket No. 6730)	
Clove Creek:	
At downstream corporate limits	*251
Upstream side of Horton Road	*327
Upstream side of East Mountain Road	*365
Upstream side of Campbell Road	*414
Approximately 1.1 miles upstream of Campbell Road	*495
Canopus Creek:	
At downstream corporate limits	*97
Upstream side of County Route 13	*155
At upstream corporate limits	*185
Hudson River: Entire shoreline within community	*8
Maps available for inspection at the Town Clerk's Office, Town Hall, 238 Main Street, Cold Springs, New York 10516.	
Port Henry (village), Essex County (FEMA Docket No. 6902)	
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Village Office, 25 South Main Street, Port Henry, New York.	
Webster (town), Monroe County (FEMA Docket No. 6730)	
1st Tributary to Mill Creek:	
At confluence of Mill Creek	*297
Downstream side of Holt Road	*334
Upstream side of Shoemaker Road	*349
Downstream side of Klem Road	*362
Upstream side of CONRAIL	*375
Approximately 0.8 mile upstream of CONRAIL	*402
2nd Tributary to Mill Creek:	
At confluence with Mill Creek	*321
Approximately 80 feet downstream of Wall Road	*337
Approximately 110 feet upstream of Klem Road	*356
At CONRAIL	*388
Approximately 40 feet downstream of New York State Route 104	*405
1st Tributary to Fourmile Creek:	
At confluence with Fourmile Creek	*278
Approximately 80 feet downstream of Bridgeboro Drive	*305
Downstream side of Salt Road	*328
Upstream side of 3rd dam	*344
Downstream side of Schlegal Road	*362
Approximately 250 feet upstream of Basket Road	*382
Approximately .5 mile upstream of Basket Road	*393
West Creek:	
Approximately 40 feet downstream of Webster State Park boundary	*306
Upstream side of Whiting Road	*343
Downstream side of CONRAIL	*360
Tributary to 1st Tributary to Fourmile Creek:	
At confluence with 1st Tributary to Fourmile Creek	*378
Tributary to Fourmile Creek approximately 0.35 mile upstream of confluence with 1st Tributary to Fourmile Creek	*385
Maps available for inspection at the Town Hall, 1000 Ridge Road, Webster, New York.	
Westport (village), Essex County (FEMA Docket No. 6902)	
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Village Community Center, Main Street, Westport, New York.	
NORTH CAROLINA	
Speed (town), Edgecombe County, (FEMA Docket No. 6902)	
Deep Creek:	
About 1.2 miles downstream of confluence of Long Branch	*54
About 0.85 mile upstream of confluence of Knight Swamp	*58
Longs Branch:	
At mouth about 1400 feet	*55
Upstream of State Route 122	*58
Knight Swamp:	
At mouth about 900 feet	*56
Upstream of Seaboard Coast Line Railroad	*60
Maps are available for inspection at the Edgecombe County Administration Building, 201 Andrews Street, Tarboro, North Carolina.	
NORTH DAKOTA	
Barnes County, Unincorporated Areas (FEMA Docket No. 6902)	
Sheyenne River:	
4,700 feet downstream of S1O/15 line, T138N, R58W	*1,196
1,000 feet upstream of S3/1O, T138N, R58W bridge	*1,199
1,800 feet downstream of S27/34 line, T138, R58W	*1,203
2,000 feet upstream of FAS 603 S27/28 bridge	*1,208
100 feet downstream of FAS 603 S16/21 bridge	*1,210
2,300 feet upstream of County Road 21	*1215
Maps available for inspection at 491 Second Avenue, N.W., Valley City, North Dakota.	
Center (township), Richland County (FEMA Docket No. 6902)	
Bois de Sioux River:	
At Section 20/29, T132N, R47W	*962
At T131/132N, R47W	*965
Wild Rice River:	
At County State Aid Highway 13	*957
At Federal Aid Road 81	*962
At Section 6/31, T131/132N, R48W	*963
Maps are available for inspection at the home of the Township Chairman, Mr. Robert Buck, Rural Route #2, Box 158, Wahpeton, North Dakota 58075.	
Wahpeton (city), Richland County (FEMA Docket No. 6902)	
Red River of the North:	
At unnamed road at Section Line 21/28, T133N, R47W	*957
At Highway 210 Bridge	*959
At Thirteenth Avenue North	*960
Bois de Sioux River:	
At confluence with Otter Tail River	*961
At Bohemian National Cemetery	*962
Maps are available for inspection at the Office of the City Engineer, 120 North Fourth Street, Wahpeton, North Dakota 58075.	
OHIO	
Clark County (unincorporated areas), (FEMA Docket No. 6902)	
Mad River:	
About 1.4 miles downstream of State Route 4	*864
Just downstream of County Line Road	*953
Mud Run:	
Just upstream of Interstate 675	*844
Just downstream of Fowler Road	*897
Beaver Creek:	
Just upstream of Bird Road	*1,002
Just downstream of Newlove Road	*1,060
Maps available for inspection at the County Building Department, 25 West Pleasant Street, Springfield, Ohio.	
Dover (city), Tuscarawas County (FEMA Docket No. 6709)	
Tuscarawas River:	
About 0.3 mile downstream of Chessie System	*867
About 0.64 mile upstream of Wooster Avenue	*871
Sugar Creek:	
At mouth	*868
About 0.45 mile upstream of Third Street	*873
Maps available for inspection at the City Hall, East Third Street, Dover, Ohio.	
London (city), Madison County, (FEMA Docket No. 6902)	
Oak Run:	
Just upstream of High Street	*1,035
About 1.1 miles upstream of Old Springfield Road	*1,055
Glade Run:	
At mouth	*1,038
About 2500 feet upstream of Garfield Avenue	*1050
Maps available for inspection at the City Hall, 102 South Main Street, London, Ohio.	
OKLAHOMA	
Inola (town), Rogers County (FEMA Docket No. 6902)	
Verdigris River:	
At downstream corporate limits	*547
At upstream corporate limits	*548
Maps available for inspection at the Town Hall, Inola, Oklahoma.	
Pryor Creek (city), Mayes County (FEMA Docket Nos. 6696 and 6902)	
Pryor Creek:	
Approximately .6 mile downstream of confluence of Park Branch Creek	*600
Floodplain at intersection of County Road and 9th Street	*602
Approximately .45 mile upstream of 9th Street	*606

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 210 feet downstream of State Route 20	*607
Approximately 90 feet upstream of upstream corporate limits	*611
Salt Branch Creek:	
At downstream corporate limits	*626
At upstream corporate limits	*627
Park Branch Creek:	
Approximately 1,050 feet downstream of County Road	*606
At downstream side of Missouri-Kansas-Topeka Railroad bridge	*610
At upstream side of Coo-Y-Yah Street	*615
Maps available for inspection at the City Hall, Pryor Creek, Oklahoma.	
PENNSYLVANIA	
Manorville (borough), Armstrong County (FEMA Docket No. 6902)	
Allegheny River:	
At upstream corporate limits (extended)	*792
At downstream corporate limits (extended)	*791
Maps available for inspection at the Borough Secretary's Office, Water Street, Manorville, Pennsylvania.	
South Buffalo (township), Armstrong County (FEMA Docket No. 6902)	
Allegheny River:	
Approximately 1,300 feet downstream of downstream corporate limits	*771
Approximately 100 feet downstream of Lock and Dam No. 6	*781
At upstream corporate limits	*786
Buffalo Creek:	
At downstream corporate limits	*820
At upstream side of State Route 228	*858
Approximately 225 feet upstream of upstream corporate limits	*873
Maps available for inspection at the Township Office, Freeport, Pennsylvania.	
SOUTH CAROLINA	
Edisto Beach (town), Colleton County (FEMA Docket No. 6902)	
Atlantic Ocean:	
Along Scott Creek	*14
About 700 feet southwest of the intersection of McConkey Boulevard and Edisto Street	*20
Maps available for inspection at the Town Hall, P.O. Box 402, Edisto Beach, South Carolina.	
TENNESSEE	
Gates (town), Lauderdale County, (FEMA Docket No. 6719)	
Tisdale Creek:	
About 1,800 feet downstream of State Route 88	*305
About 2,900 feet upstream of State Route 88	*315
Maps available for inspection at the City Hall, P.O. Box 113, Gates, Tennessee.	
TEXAS	
Henrietta (city), Clay County (FEMA Docket No. 6902)	
Dry Fork of Little Wichita River:	
Approximately 1.9 miles downstream of downstream corporate limits	*865
At Hancock Road	*870
Approximately 700 feet upstream of upstream corporate limits	*880
Maps available for inspection at the City Hall, Main Street, Henrietta, Texas.	
Highland Village (city), Denton County (FEMA Docket No. 6902)	
Lewisville Lake: Entire shoreline affecting community	*537
Maps available for inspection at 948 Highland Village Road, Lewisville, Texas.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Plum Grove (city), Liberty County (FEMA Docket No. 6902)	
East Fork San Jacinto River:	
Approximately 0.95 mile downstream of County boundary	
Approximately 2,000 feet upstream of confluence of Orange Branch	*83
Downstream side of FM 2090	*90
Approximately 200 feet upstream of upstream corporate limits	*96
Maps available for inspection at the City Hall, Plum Grove, Texas.	*100
UTAH	
Morgan City (city), Morgan County (FEMA Docket No. 6902)	
Weber River:	
About 6,000 feet downstream of State Street (State Highway 66)	*5,032
50 feet downstream from the center of 200 East Street	*5,060
About 4,000 feet upstream of 200 East Street	*5,075
300 feet north along 200 East Street from Weber River (at east edge of road)	#1
East Canyon Creek:	
About 5,000 feet downstream of Young Street	*5,041
Centerline of Young Street	*5,056
About 1,750 feet upstream of Young Street	*5,081
Maps are available for inspection at the City Office, 48 West Young Street, Morgan City, Utah.	
Park City (city), Summit County (FEMA Docket No. 6902)	
Silver Creek:	
1,000 feet above Union Pacific Railroad near downstream corporate limits	*6,673
At Wyatt Earpp Way	*6,713
Above Union Pacific Railroad Bridge	*6,790
At Bonanza Drive	*6,823
Above Deer Valley Drive	*6,858
At confluence of Empire Creek	*7,007
Above Deer Valley Drive South	*7,115
Maps are available for inspection at the City Office, P.O. Box 1480, Park City, Utah.	
VERMONT	
Morristown (town), Lamoille County (FEMA Docket No. 6902)	
Lamoille River:	
At downstream corporate limits	*535
At confluence of Centerville Brook	*544
At confluence of Kenfield Brook	*547
Downstream side of Cady's Falls Dam	*565
110 feet upstream of Cady's Falls Dam	*587
Approximately 1.30 miles upstream of Bridge Street	*642
1,500 feet upstream of confluence of Rodman Brook	*654
At upstream corporate limits	*661
Maps available for inspection at the Town Hall Vault, Morristown, Vermont.	
Morrisville (village), Lamoille County (FEMA Docket No. 6902)	
Lamoille River:	
Approximately 0.22 mile downstream of the downstream corporate limits	*587
Approximately 1.39 miles upstream of the upstream corporate limits	*648
Maps available for inspection at the Town Hall Vault, Morristown, Vermont.	
VIRGINIA	
Alleghany County (FEMA Docket Nos. 6730 and 6902)	
Jackson River:	
Approximately 1,700 feet downstream of County boundary	*1,015

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Upstream side of U.S. Route 220 (1st upstream crossing)	*1,051
At confluence of Karnes Creek	*1,110
Upstream side of Interstate Route 64 (2nd eastbound upstream crossing)	*1,154
Upstream side of State Route 18	*1,198
Upstream side of WVAPPCO Dam	*1,236
Upstream side of State Route 687 (1st upstream crossing)	*1,291
Upstream side of State Route 721	*1,348
Upstream side of State Route 838	*1,387
Approximately 0.8 mile upstream of confluence of Cedar Creek	*1,427
Dunlap Creek:	
At confluence with Jackson River	*1,233
Upstream side of Chessie System (1st upstream crossing)	*1,269
Upstream side of U.S. Route 60	*1,312
Upstream side of State Route 710	*1,363
Approximately 130 feet upstream of confluence of Mosy Run	*1,406
Potts Creek:	
At confluence with Jackson River	*1,203
Upstream side of State Route 18 (1st upstream crossing)	*1,241
Approximately 1.3 miles upstream of State Route 18 (3rd upstream crossing)	*1,287
Cowpasture River:	
Approximately 140 feet downstream of County boundary	*1,015
Approximately 0.6 mile upstream of U.S. Route 60	*1,070
Simpson Creek:	
At confluence with Cowpasture River	*1,065
Upstream side of U.S. Route 60 (1st upstream crossing)	*1,113
Upstream side of U.S. Route 60 (2nd upstream crossing)	*1,178
Approximately 1.0 mile upstream of U.S. Route 60 (2nd upstream crossing)	*1,241
Approximately 2.3 miles upstream of U.S. Route 60 (2nd upstream crossing)	*1,342
Smith Creek:	
Approximately 300 feet downstream of most downstream County boundary	*1,209
Approximately 2,000 feet downstream of most upstream County boundary	*1,297
At most upstream County boundary	*1,335
Maps available for inspection at the Department of Public Works, 500 Allegheny Street, Clifton Forge, Virginia.	
WASHINGTON	
Rockford (town), Spokane County (FEMA Docket No. 6902)	
Rock Creek:	
At downstream corporate limit	*2,344
Just upstream of State Highway 27 Bridge	*2,349
Just downstream of Union Pacific Railroad Bridge	*2,353
At upstream corporate limit	*2,368
At southernmost corner of incorporated area of Rockford	*2,374
Mica Creek:	
At confluence with Rock Creek	*2,352
Just upstream of First Avenue Bridge	*2,356
At upstream corporate limit	*2,369
Maps available for inspection at the City Hall, West 20 Emma Street, Rockford, Washington.	
WEST VIRGINIA	
Fairmont (city), Marion County (FEMA Docket No. 6902)	
Monongahela River:	
Downstream corporate limits	*869
At confluence of Tygart Valley and West Fork Rivers	*875
Tygart Valley River:	
At confluence with the Monongahela River	*875
Upstream corporate limits	*875
West Fork River:	
At confluence with the Monongahela River	*875
Upstream corporate limits	*880
Buffalo Creek:	
At confluence with the Monongahela River	*871

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Upstream corporate limits	*873
Hickman Run:	
At confluence with the Monongahela River	*872
Approximately 10 feet upstream of Morgantown Avenue	*933
Approximately 100 feet upstream of Grafton Road	*974
Maps available for inspection at the Office of Community Affairs, Planning and Development, P.O. Box 1428, Fairmont, West Virginia.	

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The modified base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. *Elevation in (NGVD)
MASSACHUSETTS	
Methuen (city), Essex County (FEMA Docket 6665)	
Merrimack River:	
At downstream corporate limits	*29
Approximately 300 feet downstream of Merline Avenue (extended)	*31
Approximately 600 feet upstream of Merrimack Road (extended)	*33
At Olive Avenue (extended)	*51
Upstream side of Interstate 93	*52
At most upstream corporate limits	*55
Bare Meadow Brook:	
At downstream corporate limits	*29
Downstream side of Pleasant Valley Street	*36
Upstream side of Chippy Lane	*65
Upstream side of Hills Pond Dam	*78
Hawkes Brook:	
At confluence with Bare Meadow Brook	*29
Approximately 0.66 mile downstream of Washington Street	*60
Upstream side of Washington Street	*119
Upstream side of Howe Street	*131
Upstream side of North Street	*145
Bartlett Brook:	
At confluence with Merrimack River	*53
Approximately 1.1 mile upstream of North Lowell Street	*63
Peat Meadow Brook:	
At confluence with Spicket River	*110
Upstream side of Danton Drive	*115
Downstream side of Forest Street	*134
Maps available for inspection at the Conservation Agent's Office, Methuen, Massachusetts.	
TEXAS	
Montgomery County (FEMA Docket No. 6719)	
White Oak Creek:	
At downstream County boundary	*65
Upstream side of Southern Pacific Railroad	*87
Upstream side of Rolling Hills Drive (downstream crossing)	*116
Approximately 600 feet upstream of FM 1314	*129
Silverdale Creek:	
Approximately 3,800 feet downstream of southbound Interstate Route 45 and U.S. State Route 75	*128
Upstream side of Missouri Pacific Railroad	*141
At upstream Corporate limits	*159
Grand Lake Creek: At upstream corporate limits	*158
Maps available for inspection at 326½ Main Street, Conroe, Texas.	
Montgomery County (FEMA Docket No. 6901)	
White Oak Creek-West:	
Approximately 0.6 mile downstream of Chateau Woods corporate limits	*110
Approximately 0.4 mile downstream of Chateau Woods corporate limits	*111
White Oak Creek-West Tributary No. 1:	
Downstream Chateau Woods corporate limits	*115
Upstream Chateau Woods corporate limits	*123
Maps available for inspection at 326½ Main Street, Conroe, Texas.	
WEST VIRGINIA	
Putnam County (FEMA Docket 6719)	
Kanawha River:	
Approximately .26 mile downstream of downstream County boundary	*572
At State Route 34	*579
At upstream County boundary	*586
Manila Creek:	
At confluence of Heizer Creek	*583
Approximately 140 feet upstream of County Route 5	*585
Heizer Creek:	
At confluence with Pocatalico River	*583
Upstream side of Heizer Creek Road	*632
Upstream side of County Route 34/5	*663
Approximately .89 mile upstream of County Route 34/5	*693
Approximately 1.8 miles upstream of County Route 34/5	*731
Pocatalico River:	
At confluence of Kanawha River	*583
Approximately 450 feet upstream of confluence of Heizer Creek	*583
Little Hurricane Creek:	
At confluence with Kanawha River	*576
Upstream side of County Route 29-4	*581
Approximately 100 feet upstream of County Route 42	*652
Lick Run:	
At confluence with Little Hurricane Creek	*652
Approximately 140 feet upstream of Blue Lick Road	*700
Hurricane Creek:	
At confluence with Kanawha River	*576
Upstream side of County Route 19	*585
Upstream side of Interstate 64	*619
Approximately 180 feet upstream of State Route 34	*647
Five and Twentymile Creek:	
At confluence with Kanawha River	*574
Approximately 80 feet upstream of Stave Branch Road	*574
Plantation Creek:	
Confluence with Kanawha River	*574
Approximately 0.87 mile upstream of U.S. Route 35	*592
Eighteenmile Creek:	
At confluence with Kanawha River	*573
Upstream side of County Route 10	*573
Approximately 6.9 miles upstream of confluence with Kanawha River	*577
Approximately 9.7 miles upstream of confluence with Kanawha River	*581
Cross Creek:	
At downstream County boundary	*573
Approximately 110 feet upstream of County boundary	*573
Maps available for inspection at the Putnam County Courthouse, Winfield, West Virginia.	

Issued: March 10, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-5548 Filed 3-16-87; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 86-1; FCC 86-577]

Common Carrier Services; WATS-Related and Other Amendments of the Access Charge Rules

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order.

SUMMARY: The Federal Communications Commission denies requests by US West and SouthernNet, Inc. for reconsideration of the decision to implement a transition for WATS resellers subject to revisions in the access charge rules. The Commission also denies an emergency motion filed by a group of resellers for stay and/or suspension of the rule changes applicable to WATS resellers. The Commission believes that its decision to implement a transition for WATS resellers is a reasonable accommodation of the interests of all affected parties.

EFFECTIVE DATE: April 15, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sandra Eskin, Policy and Program Planning Division, Common Carrier Bureau, (202) 632-9342.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in CC Docket 86-1, adopted December 24, 1986, and released January 15, 1987. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. Among certain other actions taken in the First Report and Order, CC Docket 86-1 (51 FR 10839; March 31,

1986) the Commission provided for a transition in implementing some of the rule changes affecting WATS resellers.

2. The transition was adopted as a result of the Commission's concern that a flash-cut change could have an adverse impact on WATS resellers who might find it necessary to reconfigure their networks as a result of the rule changes. The FCC was concerned that it might be difficult to accomplish such reconfigurations by June 1, 1986, in light of possible time delays in processing orders for alternative facilities, as well as uncertainty about the size of AT&T's WATS rate reductions resulting from the First Report and Order. Thus, the transition provided a limited exception to the June 1, 1986, effective date for applying access charges to the access lines used by WATS resellers. Under the transition, WATS resellers were excused from paying Carrier Common Line Charges (CCLCs) until January 1, 1987, for traffic carried on resold WATS lines already in service as of March 13 1986 but were still required to begin paying all traffic-sensitive access charges for such traffic as of June 1, 1986.

3. The Commission rejects in this Memorandum Opinion and Order US West's request that it eliminate the resellers' transition. US West argued that AT&T's WATS rate reduction obviated the need for the transition by eliminating the possibility that resellers would effectively be paying CCLCs twice on the originating end of their calls. The FCC determines that only after June 1, 1986, when modified WATS rates went into effect, could WATS resellers make an informed decision whether to continue to resell WATS or order alternative facilities.

4. Furthermore, in reaffirming the transitional plan as an equitable approach to assessing access charges on WATS resellers, the Commission states that seven months is not an unreasonably long period to allow those carriers some relief from rule changes that mark a significant revision in the access charge treatment of WATS resale, particularly because those resellers subject to the transition pay all traffic-sensitive access charges during the transition period.

5. The FCC also rejects SouthernNet's request to expand the transition to include resellers of OCC WATS-like services and to permit WATS resellers to switch carriers during the transition without losing the CCLC exemption. The Commission emphasizes that the transition was aimed solely at mitigating the impact on WATS resellers of the access charge changes adopted in the First Report and Order, changes that did not apply to resellers of WATS-like services.

6. Additionally, the Commission denies an emergency motion filed by Telephone Communications Corp., LDB Corporation, and Ad Hoc Resellers requesting a stay and/or suspension of the rule changes applicable to WATS resellers, or in the alternative, a stay of the elimination of the resellers transition, pending court review. The Commission determines that the parties failed to meet the standards for granting a stay.

7. Finally, the Commission takes the opportunity to make one amendment to the Part 69 rules that it inadvertently failed to include in the First Report and Order. In order to fully implement the special access treatment of WATS access lines, the Commission amends § 69.155(e)(6) of its rules to make WATS access lines eligible for the self-certification exemption to the special access surcharge.

Ordering Clauses

8. Accordingly, it is hereby ordered that pursuant to 47 U.S.C. 154 (i) and (j), 201, 202, 203, 205, 218, and 403, the petition for reconsideration filed by US West is denied.

9. It is further ordered, that the petition for reconsideration filed by SouthernNet, Inc. is denied.

10. It is further ordered, that the Motion for leave to file late comments by Litel Telecommunications Corp. is granted.

11. It is further ordered, that the Emergency Motion for Stay and or Suspension filed by Telephone Communications Corp., LDB Corporation, and Ad Hoc Resellers is denied.

12. It is further ordered, that the amendment of Part 69 of the Commission's rules set forth below is adopted, Effective April 23, 1987.

List of Subjects in 47 CFR Part 69

Comment carrier access charges, Common carrier resale, Wide Area Telephone Service (WATS).

Part 69 of Title 47 of the Code of the Federal Regulations is amended as follows:

PART 69—ACCESS CHARGES

1. The authority citation for Part 69 continues to read as follows:

Authority: Section 4(i), Section 4(j), 201, 202, 203, 205, 218, 403, and 410 of the Communications Act as amended; 47 U.S.C. 154(i), 201, 202, 203, 205, 218, 403, and 410.

2. Section 69.115 is amended by revising paragraph (e)(6) to read as follows:

§ 69.115 Special access surcharges.

* * * * *

(e) * * *

(6) Any termination of a line that the customer certifies to the exchange carrier is not connected to a PBX or other device capable of interconnecting a local exchange subscriber line with the private line or WATS access line.

William J. Tricarico,

Secretary.

[FR Doc. 87-5514 Filed 3-16-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Parts 1, 73 and 74

[MM Docket No. 86-144]

Radio Broadcast Services; Experimental, Auxiliary, and Special Broadcast and Other Program Distributional Services

AGENCY: Federal Communication, Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's Rules by deleting the reservation of certain commercial FM channels for Class A use. The Commission found that spectrum efficiency would be increased and the need to reserve Class A use is not longer present. Co-channel upgrades on Channel 211 will be carefully examined in TV Channel 6 markets to determine impact on noncommercial educational availability. The proposal for a blanket increase in power and antenna height for all Class A stations was found to be outside the scope of the proceeding.

EFFECTIVE DATE: March 23, 1987.

FOR FURTHER INFORMATION CONTACT: Joel Rosenberg, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order, MM Docket No. 86-144, adopted December 29, 1986 and released February 3, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. The Commission amended § 73.206 of its Rules by deleting the reservations of twenty commercial FM channels for

Class A use previously set forth in paragraphs (a) and (b). Paragraphs (b) and (c) of § 73.206 were removed and designated paragraphs (d) and (e), respectively, to § 73.211. The Commission amended § 74.1202 by deleting reference in paragraph (b)(1) to § 73.206(a) and by designating therein the twenty channels previously set forth in § 73.206.

2. This proceeding was initiated by the Commission to seek comments on its proposals to review and correct inconsistencies in certain FM technical rules resulting from Commission action in Docket No. 80–90. Resolution of some issues yields immediate public benefit, and such issues are easily disposed of and have substantial support from commenters. Those issues are addressed in this *First Report and Order*. The resolution of others is more appropriately left to subsequent action.

3. The Commission in Docket No. 84–231, implementing the action in Docket 80–90, added nearly 700 FM allotments to various communities. This was made possible primarily by the removal of the prohibition against operation of Class A facilities on Class B/C channels. However, the Commission did not remove the reservation of 20 channels exclusively for Channel A use. Although those 20 channels were originally reserved to insure the availability of FM service to smaller communities, the need to retain the reservations is questionable in light of the availability of the recent allotments. Although Commission policy encourages its broadcast licensees to upgrade their facilities in order to provide enhanced service to the public, retention of the reservations poses an obstacle to Class A operators wishing to upgrade on co-channels, on adjacent channels, and on IF frequencies pursuant to recently adopted amendments to the Rules. Because no other parties can use such frequencies, spectrum efficiency will be improved without detriment to the interests of other parties.

4. Upgrades on Channel 221 can adversely impact the availability of spectrum for noncommercial educational use (Channels 201–220), particularly in markets where there exists a television operation on Channel 6. In such circumstances the television operation constricts the availability of frequencies at the lower portion of the NCE band, while the upgraded operation on Channel 221 would constrict the upper portion, especially on Channels 218–220. Accordingly, petitioners seeking to upgrade on Channel 221 whose proposed 1mV/m contours would overlap the Grade B contours of Channel 6 operations will bear a particularly heavy burden in demonstrating that their proposals would serve the public interest. In particular, the Commission will examine the record in rule making proceedings to determine whether there is sufficient existing or potential noncommercial educational service.

5. The Commission has determined that no substantial benefits would result from classifying stations according to community of license rather than zone of transmitter location. The existing classification scheme has not led to significant administrative inconvenience, and it would be disruptive to remove the reference to transmitter location in § 73.206(c) of the Rules, especially where stations seek to relocate transmitters into the zones of their communities. Further, this proposal has not generated significant support. Therefore, we shall not change the rules regarding transmitter location determining the class of channel.

6. The proposals set forth in the *Notice of Proposed Rule Making* ("*Notice*") were limited to review and correction of inconsistencies in certain FM technical rules. Thus, comments urging a blanket increase in allowable operating power and antenna height as a more appropriate way to enhance Class A service are beyond the scope of the *Notice* and have not been considered in this proceeding.

List of Subjects

47 CFR Part 1

Practice and procedure.

47 CFR Parts 73 and 74 Radio broadcasting.

47 CFR Parts 1, 73 and 74 are amended as follows:

1. The authority citation for Parts 1, 73 and 74 continues to read:

Authority: 47 U.S.C. 154, 303.

2. Section 1.420 is amended by adding a Note following paragraph (h) to read as follows:

PART 1—[AMENDED]

§ 1.420 Additional procedures in proceedings for amendment of the FM, Television or Air-Ground Table of Assignments.

* * * * *

(h) * * *

Note: Licensees and permittees operating Class A FM stations who seek to upgrade their facilities to Class B1, B, C2, C1, or C status on Channel 221 and whose proposed 1 mV/m signal contours would overlap the Grade B contour of a television station operating on Channel 6 must meet a particularly heavy burden by demonstrating that grants of their upgrade requests are in the public interest. In this regard, the Commission will examine the record in rule making proceedings to determine the availability of existing and potential noncommercial educational service.

PART 73—[AMENDED]

§ 73.206 [Removed]

§ 73.211 [Amended]

3. Section 73.206 is removed. [Paragraphs (b) and (c) of this section are transferred to § 73.211 and designated paragraphs (d) and (e) therein.]

4. Section 73.211 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 73.211 Power and antenna height requirements.

* * * * *

(d) Stations designated as Class A, B1, and B may be authorized in Zones I and I–A. Classes A, C2, C1 and C may be authorized in Zone II. The facilities for each class of station are listed in Section 73.211.

(e) The rules applicable to a particular station, including minimum and maximum facility requirements, are determined by its class. Class designation is based on the zone in which the station's transmitter is located, or proposed to be located.

PART 74—[AMENDED]

5. Section 74.1202 is amended by revising paragraph (b)(1) to read as follows:

§ 74.1202 Frequency assignment.

* * * * *

(b) * * *

(1) Commercial FM translators: Channels 221, 224, 228, 232, 237, 240, 244, 249, 252, 257, 261, 265, 269, 272, 276, 280, 285, 288, 292, and 296.

* * * * *

Federal Communications Commission

William J. Tricarico,

Secretary.

[FR Doc. 87–5689 Filed 3–16–87; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 52, No. 51
Tuesday, March 17, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Public Notice To Solicit Comments on Impact of Pub. L. 99-591 and 99-661

AGENCY: Small Business Administration (SBA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: As required by Pub. L. 99-591 and identical provisions of Pub. L. 99-661, the SBA is conducting a review of the size standards of industries in the following industry groups: construction, architecture and engineering services (including surveying and mapping), shipbuilding and ship repair, and refuse systems and related services. This notice sets forth the methodology upon which the SBA will focus the review. It also invites the public to: (1) Provide the SBA with data and perspectives which may be useful in determining whether changes to the size standards are appropriate, or in establishing the percentage of contract work which the SBA should require to the performed by the contractor's own workforce in a small business set-aside, or section 8(a) contract; and, (2) to comment upon the procedure the SBA intends to use in these efforts. This information will be utilized by the SBA when it proposes a rule change affecting its size standards and subcontracting limitations at a later date as directed by Pub. L. 99-591.

DATE: Comments to be submitted on or before April 16, 1987.

ADDRESS: Send comments to: Monika Edwards Harrison, Chairman Size Policy Board, U.S. Small Business Administration, 1441 'L' Street, NW., Room 600, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Gene Van Arsdale, (202) 653-6373.

SUPPLEMENTARY INFORMATION: Public Law 99-591 (an Act making continuing appropriations for Fiscal Year 1987) and an identical provision of Pub. L. 99-661 (National Defense Authorization Act for Fiscal Year 1987) require the Small Business Administration to complete a review of the size standards applicable to certain industry categories during April 1987. The industry groups are: Construction (all SIC codes in Major Groups 15, 16, and 17 of the SIC system); Architecture and Engineering Services, including Surveying and Mapping Services (SIC codes 8711, 8712, and 8713); Shipbuilding and Ship Repair (SIC code 3731); and Refuse Systems and Related Services (SIC code 4953).

It should be noted that these groups include, in some cases, a number of industries with separate size standards. Construction, for example, includes nine industries in general construction, each with a size standard of $17.0 million in gross annual receipts and 17 special trade industries, each with a size standard of $7.0 million. If each of these size standards is reviewed separately, the homogeneity of size standards within the construction industries could be upset. This could result in some firms within either the general construction category, or the special trade category being considered eligible to bid on some contracts, but not on others based on size. Thus many industries could be impacted by this legislation, depending on the SBA's approach to the Act.

The review will focus on two questions. First, whether the pertinent size standards result in small business set-asides and section 8(a) contracts exceeding 30 percent of the Federal market for the industries in question. If the SBA determines that contracts awarded under the small business set-aside program and the section 8(a) program exceed 30 percent of the value of total Federal awards in any of the four industry categories, the SBA must adjust that industry size standard to a level likely to reduce small business set-asides and section 8(a) contract awards to approximately 30 percent (30 percent rule). Second, the SBA will study whether the shipbuilding and ship repair industry, and the dredging segment of the construction industry should be further divided to recognize perceived special capital equipment, labor, or geographic requirements or the emergence of a new industry.

In a separate effort, the SBA will review the composition of labor force for set-aside procurements. The law requires that any firm receiving a small business set-aside contract for services or supplies must perform at least 50 percent of the cost of the contract (not including the cost of materials in manufacturing contracts) with its own employees. However, under the law, the SBA may change the percentage if necessary to reflect conventional industry practices among small business concerns in a specific industry category.

The SBA is also directed to establish similar subcontracting limitation requirements for general and specialty construction contracts, and other industries (such as mining) not previously cited. The public is asked to submit its views on the appropriate subcontracting limitation requirements for services, manufacturing, construction, and other industry contracts, particularly industry practices tending to show that the percentage that should be performed by a small business contractor in a specific industry should be less than 50 percent.

Methodology

Implementation of the 30 Percent Rule

The SBA will use data from the Federal Procurement Data Center for Fiscal Years 1984, 1985 and 1986 on award of contracts by Product and Service Code and by the Standard Industrial Classification (SIC) Code of the contractor. Data will also be solicited from the Department of the Navy regarding shipbuilding and ship repair and from the Army Corps of Engineers regarding dredging. The public and other Federal agencies are also requested to provide any pertinent data concerning any of the four enumerated industry categories. Industry associations are specifically encouraged to provide information and data on the impact of the law on their members in the Federal market. Many associations will be separately solicited. Finally, questionnaires will be used to obtain information from knowledgeable Federal agencies' personnel and from the private sector.

In evaluating the information submitted, greatest significance will be accorded to data from the Federal Procurement Data Center and other disinterested sources, but importance will also be attached to specialized studies by recognized authorities. All information submitted, however, will be examined and considered. The SBA will,

in compliance with the law and administrative rulemaking procedures, reduce the size standard for any of the four industry categories in which small business set-asides and 8(a) contracts have exceeded 30 percent. The new size standard will be established after consideration of the size of the Federal market, the distribution of awards by value and any established correlation between size of contractor and ability to perform contracts of varying values. In general, it is anticipated the greater that the set-aside and 8(a) percent exceeds the 30 percent threshold, the greater the size standard adjustment, although there may may be some exceptions to this rule.

Industry Subdivisions

While presently the SBA's size standards are applied nationally and without geographic distinction, the SBA will consider whether to establish separate size standards for segments of industries. Segmentation of SIC codes (and correspondingly of size standards) is authorized only when (1) the Government typically designates the area where work for such contracts is to be performed, (2) Government purchases comprise the major portion of the entire domestic market for such goods or services, and (3) due to the fixed location of facilities, high mobilization costs, or similar economic factors, it is unreasonable to expect competition from business concerns located outside of the general areas where such concerns are located. Comments advocating segmentation in a particular industry should specifically address how each of these three requirements is met.

The SBA is interested in information which could establish significant differences among the markets listed below, and other industries in which capital equipment or special labor needs, or geographic requirements could argue for the segmentation of SIC codes (and, therefore, size standards). The SBA will consider any other factors established by the public or Federal agency comments.

SIC–3731 Shipbuilding and ship repair. (At present this industry has a size standard of 1,000 employees).

(1) Nuclear ship repair and shipbuilding
(2) Shipbuilding (nonnuclear)
(3) Nonnuclear ship repair at:
  (a) Puget Sound/Portland
  (b) San Francisco
  (c) Los Angeles/Long Beach
  (d) San Diego
  (e) New England
  (f) New York/Philadephia/New Jersey
  (g) Norfolk/Baltimore
  (h) Charleston
  (i) Jacksonville, Florida
  (j) Gulf Coast

SIC–1629 Heavy Construction, Not Elsewhere Classified, dredging component. (At present this industry has a size standard of $9.5 million in gross annual receipts).

(1) *Heavy Equipment/Dredging:*
  (a) Northeast
  (b) Southeast
  (c) Gulf Coast
  (d) West Coast
  (e) Great Lakes
(2) *Heavy Equipment/Dredging:*
  (a) Northeast
  (b) Southeast
  (c) Gulf Coast
  (d) West Coast
  (e) Great Lakes

Implementation of Subcontracting Limitations

In determining the degree of subcontracting to be allowed within small business set-asides and 8(a) contracts, (the assurance as to composition of labor force requirement of the law) the SBA intends to use the statutory figure of 50 percent as its reference point for all service and supply (including manufacturing) industries, and the figures established in the SBA's regulation (13 CFR Part 124) for 8(a) firms as the reference point for construction. This regulation stipulates that "at least 15 percent of the contract labor value for general contractors and 25 percent of special trades, must be performed with the contractor's own work force."

The SBA will seek data from contracting agencies and from associations and individuals in the private sector which will indicate the validity of these reference points for the four industry groups subject to the statutory size standards review. The SBA also requests comments concerning whether these subcontracting limitations are appropriate for all industry categories. Industry studies and surveys will be considered along with the recommendations of Federal procuring agencies and personnel. Data on an industry-wide basis, developed by disinterested groups or recognized authorities, will be given greater consideration than more narrow studies or materials from advocates of specific rules.

The projected time for implementation of the law is:

Proposed Rule: Spring 1987
Final Rule: Summer 1987
Effective Date of Final Rule: October 1, 1987

Public Comment

Public comments on the above issues will be used to prepare a statutorily required report to the Congress on the SBA's findings and determinations from this size standard review. The public is therefore requested to provide comments or data bearing on the above issues, specifically:

(a) Adjustment of size standards in the four named industry categories to a level that will likely reduce the total combined 8(a) and set-aside contracts awarded to approximately 30 percent of the value of Federal contracts in those four industry categories.

(b) The validity of market segmentations, addressing the specific requirements which must be met before segmentation can occur.

(c) The validity of the labor force or subcontracting limitations.

In addition to these broad issues which are cited by the law, the SBA invites comment on the following more restricted issues:

(1) What methodology should the SBA use to determine the level to set a size standard to accommodate the 30 percent rule?

(2) What should the SBA do when the data implementing the 30 percent decision rule are considered unreliable?

(3) Assuming that size standards based on geographic or regional variations are warranted in several industry categories, who should define the regional lines? Should different industries have different regional lines?

(4) If the SBA were to set size standards based on capital equipment differences, who should decide the capital equipment guidelines separating the various kinds of equipment in question?

(5) Would several different size standards for the same industry, based on variations in capital equipment and geography, be confusing or administratively inconvenient to use?

(6) Are the labor force or subcontracting restrictions reasonable? To what degree should industries vary in their contracting limitations?

The public may wish to comment on these questions from a generalized viewpoint in which the SBA's entire program is evaluated, or from the more specialized viewpoint focusing on that industry which might be of particular interest to be commenter. Each commenter is requested to cite the factual basis upon which his or her opinion is predicated. The various comments will be incorporated in a report to the Committee on Armed Services and the Committees on Small

Business of the Senate and the House of Representatives.

While the SBA must work within the requirements of the law, it is nonetheless interested in the public comments on the possible impact and method of implementing any size standard changes. The SBA will follow the "Administrative Procedures Act," including publication of a proposed rule and request for additional comments, before making any final changes in the size regulations (13 CFR 121). Also the SBA is sending written requests for comments on this notice to various trade organizations and procuring agencies of the Government as well as requesting publication of a special notice in the Commerce Department's "Commerce Business Daily."

Commenters are requested to state their views on what specific size standard adjustments, market segmentations, and subcontracting restrictions need to be made with respect to the construction, architectural and engineering, shipbuilding and ship repair, and refuse systems industries in order to meet the intent of the statute.

Dated: March 3, 1987.

Charles L. Heatherly,

Deputy Administrator, U.S. Small Business Administration.

[FR Doc. 87-5648 Filed 3-16-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-20-AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Model 757 series airplanes, which would require certain modifications to improve the Instrument Landing System (ILS) immunity to electromagnetic interference (EMI). This proposal is prompted by reports of several airplane models in which EMI generated by various digital electronic equipment has been shown to be a source of false localizer signals which can cause apparently normal operation of the localizer deviation bars when no ILS signal is present. This condition, if not corrected, could lead to erroneous ILS deviation information displayed to the flight crew and abnormal operation of the autopilot.

DATE: Comments must be received no later than May 4, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-20-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth J. Schroer, Aerospace Engineer, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1943. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn. ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-20-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Discussion: An operator of a Boeing Model 737 airplane reported a condition where selection of certain ILS frequencies, with no operating ILS ground transmitter, resulted in localizer deviation indication and retraction of warning flags on the radio digital distance magnetic indicator indicating a valid response. Further investigation found this condition to exist on several other airplane models which have the localizer antenna located on the nose bulkhead. The degree of interference varies from one airplane model to another. The problem detected on certain Model 757 airplanes results from emissions of radio frequency interference within the VHF frequency band from the digital weather radar receiver-transmitter units and the electronic flight instrumentation system (EFIS) symbol generator. These emissions are greater than the minimum sensitivity of the ILS receiver and have a frequency composition which leads the receivers to interpret them as valid signals.

If an ILS frequency should be selected which corresponds to one of these radiated emissions, and the ground transmitter is out of range or out of service, erroneous ILS deviation could be displayed to the flight crew and abnormal operation of the autopilot system may occur.

The FAA has reviewed and approved Boeing Service Bulletin 757-34A0042, dated February 3, 1987, which describes the appropriate airplane wire bundle modification to reduce susceptibility to this interference problem.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require modification to the weather radar wire bundles and coaxial cables from the localizer and glideslope antennas in accordance with the service bulletin previously mentioned.

It is estimated that 64 airplanes of U.S. registry would be affected by this AD, that it would take approximately 78 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $199,680.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a

substantial number of small entities because few, if any, Boeing Model 757 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, specified in Boeing Service Bulletin 757-34A0042, dated February 3, 1987, certificated in any category. To minimize the potential for misleading localizer deviation indication to the flight crew caused by electromagnetic interference, accomplish the following within 6 months after the effective date of this AD, unless previously accomplished:

A. Modify the weather radar wire bundle and coaxial cables from the localizer and glideslope antennas in accordance with Boeing Service Bulletin 757-34A0042, dated February 3, 1987, or later FAA-approved revision.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on March 10, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-5639 Filed 3-16-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-13-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require inspection for disbonding of tear straps in fuselage body section 46, and repair, if necessary. This proposal is prompted by reports of disbonding of upper body hot bonded skin tear straps on eight airplanes. This condition, if not corrected, could lead to rapid depressurization if a longitudinal body skin crack should occur adjacent to the area of ineffective tear strap attachment.

DATE: Comments must be received no later than May 4, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-13-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-13-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

There have been recent reports of disbonding of upper body hot bonded skin tear straps in body section 46 on eight Boeing Model 747 airplanes with 31,639 to 63,810 flight hours. In one case, disbonded tear straps were found at 141 locations in the upper body between stations 1520 and 2340, from stringers 19 left to 19 right. The tear straps are installed during manufacture to control longitudinal crack growth, if cracking should occur in the body skin. Operation of an airplane with disbonded tear straps could result in rapid depressurization if a longitudinal body skin crack should occur adjacent to the area of disbonded tear straps. This disbonding can be detected by ultrasonic inspection techniques. Both repair and terminating action consists of installing rivets.

The FAA has reviewed and approved the Boeing Commercial Airplane Company Alert Service Bulletin 747-53A2279, dated January 15, 1987, which describes ultrasonic inspection procedures used to inspect for disbonding of the tear straps between specified stringer locations in body section 46, and repair and modification procedures.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed

which would require inspection of the tear straps and repair, if necessary, in accordance with the service bulletin previously mentioned. An optional terminating modification would also be provided. It is estimated that 125 airplanes of U.S. registry would be affected by this AD, that it would take approximately 72 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $360,000 for the initial inspection.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, as listed in Boeing Alert Service Bulletin 747-53A2279, dated January 15, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect disbonding of the upper body tear straps in body section 46, accomplish the following, unless already accomplished:

A. Within 10 landings after the effective date of this AD, or within 500 landings after January 15, 1987, whichever is later, unless accomplished within the last 12 months, perform an ultrasonic inspection of tear straps for disbonding in accordance with Boeing Alert Service Bulletin 747-53A2279, dated January 15, 1987, or later FAA-approved revisions.

B. If no evidence of unbonded areas are found, reinspect those areas at intervals not to exceed 6 years.

C. If evidence of unbonded areas is found, and the unbonded area between any two adjacent stringers does not exceed 60 percent of the total tear strap area between these stringers, reinspect those areas at intervals not to exceed the limits allowed by the chart in Figure 2 or 4, as appropriate, of Boeing Alert Service Bulletin 747-53A2279, dated January 15, 1987, or later FAA-approved revisions.

D. If evidence of unbonded areas is found, and the unbonded area between any two adjacent stringers exceeds 60 percent of the total tear strap area between these stringers, repair those areas prior to further flight in accordance with Boeing Alert Service Bulletin 747-53A2279, dated January 15, 1987, or later FAA-approved revisions. If blind fasteners are used, reinspect installation at intervals not to exceed 1000 landings for loose or missing fasteners, cracks, or corrosion.

E. Terminating action for the inspections required by this AD is the installation of solid fasteners at all affected tear strap locations in accordance with Boeing Alert Service Bulletin 747-53A2279, dated January 15, 1987, or later FAA-approved revisions.

F. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on March 10, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-5638 Filed 3-16-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 371, 374 and 399

[Docket No. 70347-7047]

General License for Low Level Exports to Certain Free World Countries and Expansion of General License G-COM

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: As part of the improvements in export controls announced by the Secretary of Commerce on February 9, 1987, the Department is proposing to amend the Export Administration Regulations (15 CFR Parts 368 through 399) in two ways:

To provide a new General License GFW for certain low level dual use items to most free world countries; and

To expand General License G-COM to allow shipment of additional low level dual use items to our COCOM allies.

The proposed GFW procedure would eliminate the validated licensing requirement for export of certain low level items to about 77 free world countries. Export of these items is routinely permitted by the United States and its COCOM allies. The GFW procedure does not in any way alter licensing requirements for such items for export to the Soviet Union and other COCOM-proscribed countries. Certain free world countries have also been excluded from the proposed general license GFW pending review of significant nuclear non-proliferation and foreign policy concerns. Validated licensing requirements remain in effect for such excluded countries.

While this proposed rule would remove the validated licensing requirement for exports eligible for GFW, foreign consignees would continue to be required under the proposal to sign ITA Form-629P and file it with the exporter prior to shipment in such transactions.

DATES: Comments should be received by April 16, 1987. Final regulations will be issued May 1, 1987.

ADDRESS: Comments (six copies) should be addressed to Vincent Greenwald, Regulations Branch, Export Administration, P.O. Box 273, U.S. Department of Commerce, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: John Black or Patricia Muldonian, Regulations Branch, Office of

Technology and Policy Analysis, Export Administration, Telephone: (202) 377–2440.

SUPPLEMENTARY INFORMATION

Rulemaking Requirements and Invitation To Comment

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule also is exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of propsed rulemaking and an opportunity for public comment be given for this rule. However, because of the importance of the issues raised by these regulations, this rule is issued in proposed form and comments will be considered in developing final regulations. Accordingly, interested persons who wish to comment are encouraged to do so at the earliest possible time to permit the fullest consideration of their views.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Felxibility Analysis has to be or will be prepared.

4. This rule contains a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0625–0136.

The period for submission of comments will close April 16, 1987. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations.

All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4104, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the *Code of Federal Regulations*. Information about the inspection and copying of records at the facility may be obtained from Patricia L. Mann, International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377–3031.

List of Subjects in 15 CFR Parts 371, 374 and 399

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 368 through 399) are proposed to be amended as follows:

1. The authority citation for Parts 371 and 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 (October 2, 1986); E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

PART 371—[AMENDED]

2. Section 371.8 is amended by revising paragraphs (a) and (c) to read as follows:

§ 371.8 General License G–COM; certain shipments to COCOM countries.

(a) *Scope.* A general license designated G-COM is established, authorizing exports to countries participating in the multilateral control mechanism known as the Coordinating Committee (COCOM), for use or consumption therein, of commodities that the United States may approve for export to controlled countries with only notification to the COCOM governments.

* * * * *

(c) *Eligible commodities.* The commodities eligible for export under this general license are described in the Advisory Notes in the Commodity Control List that indicate licensing policy for Country Groups QWY. (The Advisory Notes for the People's Republic of China are *not* applicable to G–COM eligibility.) End-use and quantity restrictions in the Advisory Notes may be disregarded in determining whether G–COM may be used. However, certain advisory notes may contain specific restrictions on the applicability of G–COM. When the note is excluded from G–COM eligibility, the exclusion will be described by the phrase "NOT ELIGIBLE FOR GENERAL LICENSE G–COM." Shipments of eligible commodities are subject to the prohibitions contained in § 371.2(c).

3. A new § 371.23 is added to read as follows:

§ 371.23 General License GFW: low level exports to certain countries.

(a) *Scope.* A general license designated GFW is established authorizing exports of commodities having performance characteristics that permit the United States to approve exports to controlled countries with only notification to other COCOM governments.

(b) *Eligible countries.* Shipments may be made under this general license to Iceland, Australia, and New Zealand, and to any destination listed in Supplement No. 3 to Part 373 *except* Ethiopia, Lebanon and Nicaragua. Exports to eligible contries may be made under GFW *only* when intended for use or consumption within an eligible country or for reexport among eligible countries for use or consumption therein.

(c) *Eligible commodities.* The commodities eligible for export under

this general license are described in Advisory Notes in certain entries on the Commodity Control List. When GFW is applicable, the "Controls for ECCN" section of the CCL entry will include a "GFW Eligibility" paragraph indicating which Advisory Notes apply. Only those commodities whose technical performance characteristics are specifically described in a designated Advisory Note may be exported to an eligible country under General License GFW. Eligibility for GFW is based on the technical performance characteristics of a given commodity, not its intended end-use. Consequently, end-use restrictions in the Advisory Notes may be disregarded in determining whether GFW may be used. However, shipments of such eligible commodities are subject to the prohibitions contained in § 371.2(c).

(d) *Supporting documentation.* Before making any shipment under this General License GFW, an exporter must have in its possession the documentation that would normally be required by Part 375 to support a validated license for export to the country of ultimate destination. Where the required documentation is not a Form ITA–629P, Statement by Ultimate Consignee and Purchaser, the ITA–629P may be substituted for the required form. The exporter must retain this record in compliance with § 387.13(e). This record is not to be filed with the Department of Commerce.

PART 374—[AMENDED]

4. The authority citation for Part 374 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

§ 374.2 [Amended]

5. Section 374.2(a)(1) is amended by adding "GFW," immediately after "G–COM,".

PART 399—[AMENDED]

§ 399.1 [Amended]

6. In Supplement No. 1 to § 399.1 (the Commodity Control List), the heading of the "G–COM Eligibility" paragraph is revised to read "GFW Eligibility" in the following entries:

In Commodity Group 0 (Metal-Working Machinery), ECCN 1091A;

In Commodity Group 3 (General Industrial Equipment), ECCNs 1312A, 1353A, 1355A and 1391A;

In Commodity Group 5 (Electronics and Precision Instruments), ECCNs 1501A, 1510A, 1519A, 1520A, 1522A, 1529A, 1531A, 1532A, 1533A, 1541A, 1544A, 1545A, 1548A, 1549A, 1558A, 1559A, 1564A, 1567A, 1568A, 1572A, 1586A and 1588A;

In Commodity Group 6 (Metals, Minerals and Their Manufactures), ECCNs 3604A and 3605A; and

In Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Realted Materials), ECCNs 1754A, 1755A and 1767A;

7. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), the Advisory Note in ECCN 1131A is amended by adding the phrase "(NOT ELIGIBLE FOR GENERAL LICENSE G–COM)" immediately before the phrase "For paragraph (b)".

8. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), ECCN 1133A is amended by removing the *G–COM Eligibility* paragraph.

9. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 2 (Electrical and Power-Generating Equipment), ECCN 1205A is amended:

By inserting in Advisory Note 1 the phrase "provided they are not space qualfied" immediately after the phrase "paragraph (a)(1) above"; and

By inserting in Advisory Note 2 the phrase "(NOTE ELIGIBLE FOR GENERAL LICENSE G–COM)" immediately before the phrase "Licenses are likely to be approved".

10. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1361A is amended by inserting the phrase "(NOT ELIGIBLE FOR GENERAL LICENSE G–COM)" immediately before the phrase "Licenses are likely to be approved" in Advisory Notes 1 and 2.

11. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 1460A is amended by inserting the phrase "(NOT ELIGIBLE FOR GENERAL LICENSE G–COM)" immediately before the phrase "Licenses are likely to be approved" in (Advisory) Note 6.

12. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 1485A is amended by inserting the phrase "(NOT ELIGIBLE FOR GENERAL LICENSE G–COM)" immediately before the phrase "Licenses are likely to be approved" in the Advisory Note.

13. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision, Instruments), ECCN 1501A is amended by revising the *G–COM Eligibility* paragraph to read as follows:

GFW Eligibility: Commodities that meet technical specifications described in Advisory Notes 1 through 4 and paragraphs (a) and (b) of Advisory Note 6 under this entry regardless of end-use, subject to the prohibitions contained in § 371.2(c).

14. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1526A is amended by revising the *G–COM Eligibility* paragraph to read:

GFW Eligibility: Commodities that meet technical specifications described in paragraphs (c), (d), (e) and (f) of the List of Cable under this entry regardless of end-use, subject to the prohibitions contained in § 371.2(c).

15. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1537A is amended by revising the *G–COM Eligibility* paragraph to read:

GFW Eligibility: Commodities that meet technical specifications described in Advisory Notes 1 through 4 under this entry regardless of end-use, subject to the prohibitions contained in § 371.2(c).

16. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1547A is amended by adding a *GFW Eligibility* paragraph immediately after the *Special Licenses Available* paragraph reading:

GFW Eligibility: Commodities that meet technical specifications described in Advisory Note 1 under this entry regardless of end-use, subject to the prohibitions of § 371.2(c).

17. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1555A is amended by revising the *G–COM Eligibility* paragraph to read:

GFW Eligibility: Commodities that meet technical specifications described in Advisory Note 2 under this entry regardless of end-use, subject to the prohibitions contained in § 371.2(c). Commodities that meet technical specifications described in Advisory Note 4 under this entry are eligible *if they are for medical end use only* (notwithstanding the provisions of § 371.23(c) regarding the inapplicability of end-use).

18. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1565A is amended by revising the *G–COM Eligibility* paragraph to read as follows:

GFW Eligibility: Commodities that meet technical specifications described in

Advisory Notes 3, 5, 7, and 9 under this entry regardless of end-use, subject to the prohibitions contained in § 371.2(c). With regard to Advisory Note 9, the limitations imposed by paragraphs (b)(5)(i), (iii) and (iv), (b)(6)(iii), (b)(7)(iv), (v), and (vi), (b)(8)(i), (b)(9)(iii), and (c) are waived. However, Winchester disk drives exceeding a capacity of 100 Mbytes are EXCLUDED from GFW eligibility.

19. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1567A is amended by revising the Note in Advisory Notes 6 and 7 to read:

This Advisory Note will enter into force on 15 September 1988, but may be used for General License G-COM prior to that date.

20. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1595A is amended by inserting the phrase "(NOT ELIGIBLE FOR GENERAL LICENSE G-COM)" immediately before the phrase "Licenses are likely to be approved" in the Advisory Note.

Dated: March 12, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87-5712 Filed 3-16-87; 8:45 am]

BILLING CODE 3510-DT-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 270 and 274

[Release No. 33-6693; IC-15612; S7-9-87]

Form N-7 for Registration of Unit Investment Trusts Under the Securities Act of 1933 and the Investment Company Act of 1940

AGENCY: Securities and Exchange Commission.

ACTION: Proposed form, guidelines, rules, and rule amendments.

SUMMARY: The Commission is reproposing for comment Form N-7, a new form for the registration of unit investment trusts and their securities under the Investment Company Act of 1940 and the Securities Act of 1933, and certain related rules and rule amendments, and is publishing staff guidelines for the preparation of Form N-7. If adopted, Form N-7 would (i) integrate the reporting and disclosure requirements of the Securities Act of 1933 and the Investment Company Act of 1940 for unit investment trusts in one document; (ii) codify in the form, and collect in the guidelines, the disclosure standards that have been developed for unit investment trusts; and (iii) shorten and simplify the prospectus used in the initial offering of units and for the resale by sponsors of units in the secondary market. The format of the reproposed form, which differs significantly from the format originally proposed, would reduce compliance costs to trust sponsors while providing investors with more concise and understandable disclosure about unit trusts. The Commission also seeks comment on whether the Commission should develop a continuous or delayed offering rule for unit investment trusts similar to that which exists for certain other issuers or whether it should amend current filing rules for unit investment trusts to reduce filing burdens.

DATE: Comments on the proposed form, guidelines, rules, and rule amendments should be received on or before May 15, 1987.

ADDRESSES: Three copies of all comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7-9-87. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Thomas S. Harman, Chief, or Jay Gould, Attorney, (202) 272-2107, Office of Disclosure and Investment Adviser Regulation, or Lawrence A. Friend, Chief Accountant (202) 272-2108, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is publishing for comment:

(1) Proposed Form N-7, a registration form that would replace Form S-6 [17 CFR 239.16] under the Securities Act of 1933 [15 U.S.C. 77a et seq.] ("Securities Act") and Form N-8B-2 [17 CFR 274.12] under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] ("1940 Act"), for use by all unit investment trusts which are registered or required to be registered under the 1940 Act other than separate accounts of insurance companies. Form N-7 would consist of: (i) Part I, the simplified prospectus, containing information which meets the requirements of Section 10(a) of the Securities Act [15 U.S.C. 77j(a)]; and (ii) Part II, containing other information required in the registration statement. The text of Form N-7 as reproposed is published as Appendix A to this release.

(2) Proposed amendments to Rule 487 [17 CFR 230.487] of Regulation C under the Securities Act to simplify the registration statement of a UIT series which is not required to be reviewed by Commission staff so that it consist only of (i) the facing sheet of the registration statement, (ii) undertakings to prospectively incorporate by reference the definitive prospectus and any portion of Part II of the registration statement specific to the series being registered, (iii) portions of the registration statement of any previous series that is incorporated by reference, and (iv) the required signatures. The Commission also seeks comment on whether a continuous or delayed offering rule should be developed for unit investment trusts similar to that available to certain issuers under Securities Act Rule 415 [17 CFR 230.415].

(3) Proposed amendments to Rules 495 and 496 [17 CFR 230.495, 496] of Regulation C under the Securities Act and Rules 8b-11 and 8b-12 [17 CFR 270.8b-11, 12] under the 1940 Act to make those rules applicable to Form N-7, and proposed Rule 16A of Part 239 [17 CFR 239.16A] under the Securities Act and Rule 12A of Part 274 [CFR 274.12A] under the 1940 Act prescribing Form N-7 under those acts.

The Commission also is publishing proposed staff guidelines for the preparation of Registration Form N-7 (Appendix B). Although notice and comment on the guidelines is not required by law, all comments and suggestions received concerning the staff guidelines will be considered in developing final guidelines.

I. Background and Purpose

A. Previous Proposal of Form N-7

On May 14, 1985, the Commission published for public comment Form N-7,[1] a simplified registration statement for registering unit investment trusts ("UITs") under the 1940 Act and their securities under the Securities Act. The nature and structure of unit investment trusts are discussed in detail in Release 33-6580. A UIT issues redeemable securities representing an undivided interest in an essentially fixed portfolio of securities. Created by a sponsor that deposits a portfolio of securities with a trustee, a trust issues units of participation in the portfolio which are offered to the public. Trusts typically consist of a number of consecutive series with each series representing units in a specific, separate portfolio of

[1] Rel. Nos. 33-6580; IC-14513 (May 14, 1985) [50 FR 21282 (May 23, 1985)] (hereafter, "Release 33-6580").

securities. Unlike mutual funds, UITs have no corporate management structure and their portfolios are not managed.

While units of a trust series are redeemable, the sponsor typically maintains a "secondary market" in units of the series, rather than having the series liquidate portfolio securities to meet redemptions, because a large number of redemptions could necessitate premature termination of the series. Thus a sponsor will buy back units from investors seeking to redeem and sell those units to new investors. Because the sponsor of a UIT is considered to be an issuer of the units under section 2(4) of the Securities Act [15 U.S.C. 77b(4)],[2] resales of units by the sponsor must be made pursuant to a prospectus meeting the requirements of section 10(a) of the Securities Act. Because a trust typically offers units in substantially similar series, it is possible to develop generic prospectus disclosure for similar series.

Form N–7 will serve as the registration statement for UITs under both the 1940 Act and the Securities Act. The format of Form N–7 as originally proposed was based on Forms N–1A, N–3, and N–4 [17 CFR 274.11A, 11b, and 11c], forms recently adopted by the Commission for mutual funds and certain separate accounts of insurance companies. Proposed Form N–7, like those other forms, had a simplified prospectus, containing information essential to a prospective investor, a Statement of Additional Information ("SAI") which would have expanded on the information in the prospectus and contained the financial statements of the particular series whose securities were being registered,[3] and a third part which would have contained other information required to be in the registration statement. The SAI would have been available without charge to investors on request. The prospectus and the SAI, taken together, resulted in a two-part disclosure document for investors. In adopting the two-part disclosure document of Form N–1A, the Commission sought to streamline prospectuses so that investors would receive a readable prospectus which concisely described the essential features of investment in a fund while additional information not of routine interest to most investors would be available upon request. While following the format of the three-part registration statement with its two-part disclosure document, proposed Form N–7 also would have permitted a UIT to divide the prospectus into two parts. The first part would have contained information regarding the securities of the specific series being offered. The second part would have contained generic information about the trust. The presentation of financial information in Form N–7 as originally proposed would have departed from the N–1A format in one respect. The portfolio schedule of a UIT series would have been required in the prospectus rather than in the SAI with the other audited financial statements.

B. Synopsis of Comments and Revisions to Form N–7

In general, commenters endorsed the Commission's initiative in proposing Form N–7. They supported the Commission's effort at integrating the disclosure requirements of the Securities Act and the 1940 Act, and they supported the Commission's codification of the various UIT disclosure practices that have evolved over the years. Most commenters, however, argued that the proposed format of Form N–7 would not significantly reduce or simplify current disclosure requirements. Among other things, commenters criticized the allocation of information between the prospectus and the SAI. They asserted that the SAI would be redundant because of its repetition of material in the prospectus. Although the prospectus would have required only a "brief explanation" of those items disclosed in the SAI, commenters asserted that most of the relevant disclosure in the SAI would appear in the prospectus. At the same time, several commenters suggested that it might be preferable to place the financial statements of a series in the prospectus, with the portfolio schedule, rather than in the SAI.

In view of these comments, the Commission has modified the format of Form N–7 to eliminate the SAI. For mutual funds, the SAI provides, to those investors who request it, detailed information about fund management, brokerage allocation, and other matters not of routine interest to all investors. A mutual fund SAI also contains the financial statements of the fund. However, information on management and brokerage is not material for unmanaged investment companies with fixed portfolios such as UITs. Moreover, information contained in financial statements, particularly the schedule of portfolio securities, is important to the average UIT investor. Unlike the portfolio schedule of a mutual fund which can quickly become out of date, the portfolio schedule of a UIT will provide for an indefinite period of time an accurate description of the trust's portfolio of specified securities. Accordingly, reproposed Form N–7 would eliminate the SAI for UITs and place the most important portions of the SAI, such as the financial statements, in the prospectus.

The Commission believes the reproposed form will achieve simplication in several respects. Consistent with the original proposal, the prospectus could be structured in two parts to make its preparation easier. Changes in the reproposed form should make it easier for issuers to prepare the prospectus in two parts, with one part containing information specific to the securities of the series being registered under the Securities Act and the other part containing information about the sponsor and the trust which could be generic to other series of the trust.[4]

The reproposed form also would simplify UIT prospectuses by revising the requirement for financial statements in prospectuses used for secondary market sales of trust units by UIT sponsors. On several occasions the Commission has been asked to re-examine the requirement that a UIT whose shares are being offered in the secondary market annually update, through a post-effective amendment to its registration statement, its audited financial statements.[5] This request was

[2] The sponsor is an issuer because it typically is the depositor and, under section 2(4), the term "issuer" is defined to include the depositor of a UIT. Although secondary market sales of registered securities are usually not subject to the Securities Act once the offering has "come to rest," the courts and the Commission have consistently taken the position that all securities offered or sold by an issuer (*i.e.*, the sponsor), unless otherwise exempt, are subject to the Securities Act notwithstanding the fact that the securities may have been previously sold pursuant to a registration statement. *First MultiFunds for Daily Income* v. *United States*, 602 F.2d 332 (Ct. Cl. 1979); *SEC* v. *Stanwood Oil Co.*, 516 F. Supp. 1181 (1981); Rel. No. 33–5817 (March 15, 1977) (proposing Investment Company Act Rule 24e–2).

[3] Because Form N–7 as originally proposed would have permitted a sponsor to create a common SAI for up to ten series of a trust, the SAI could have contained financial statements of nine other series as well.

[4] Because a UIT sponsor typically is an issuer of trust units that it repurchases and resells in the secondary market, *see* note 2 *supra*, both parts of the prospectus must be kept current to comply with section 10(a)(3) of the Securities Act [15 U.S.C. 77j(a)(3)]. The benefits of preparing a prospectus bifurcated into generic and non-generic parts are twofold. First, to the extent the generic portion of the prospectus is truly generic, that part of the prospectus could be used again for subsequent series of the UIT. Second, as long as the generic part of the prospectus remains accurate, the sponsor need not revise it for resales in the secondary market. Form N–7 has been structured so that both benefits may be realized.

[5] *See* note 2, *supra*.

renewed after Form N–7 was proposed. The Commission considered whether different financial statement requirements may be appropriate for the initial sale of trust units and subsequent sales of those units by UIT sponsors. Because each series of a UIT has an essentially fixed portfolio of securities, subsequent audited financial statements of a series generally vary little from the initial financial statements. Except where securities are substituted or added, the cost of audited financial statements subsequent to the original financial statements may outweigh the benefits. The Commission therefore proposes to permit UIT to include unaudited financial statements in prospectuses used for secondary market sales under certain circumstances.[6]

While reproposed Form N–7 has been designed to streamline UIT disclosure requirements, prospectus simplification will be achieved only if registrants take advantage of the changes. The Commission encourages registrants to write shorter, more readable prospectuses and avoid technical or complex language or excessive detail. Registrants also should try, where possible, to present information that is pertinent to only some series of a trust in the specific part of the prospectus for those series, rather than in the generic portion that will be included in the prospectus for more than one series of the trust.

The Commission is also proposing, in a separate release, to streamline the procedures by which UITs register and pay registration fees for the securities they offer. For a discussion of this proposal, see Rel. No. IC–15611 (March 9, 1987).

The proposed form and guidelines are self-explanatory. Discussed below are certain aspects of the proposed form and accompanying guidelines which substantially differ from the original proposal and are of particular significance. This release does not repeat discussions of those aspects of the proposal that have not changed, such as the discussion of securities ratings, requirements for the number of copies filed, and sales literature. These matters are discussed in Release 33–6580.

II. Information Required in Form N–7

Part I–s of the registration statement sets forth seven items and Part I–g sets forth five items of disclosure required in a UIT prospectus. The specific part of the prospectus (Part I–s) would contain a cover page, summary information, a portfolio schedule, financial statements, specific risk disclosure, tax disclosure, and underwriter information. The generic part of the prospectus (Part I–g) would contain a table of contents, general description of the trust, general description of the trustee and sponsor, information on how to purchase trust units, and information on how to sell or redeem trust units. While the format is designed to permit registrants to develop a generic portion of the prospectus which could be used for many or all series of the trust, registrants do not have to prepare the prospectus in two parts. Most of the items of the form are self-explanatory and only those items which significantly differ from Form N–7 as originally proposed and are of particular interest are explained below. To meet the prospectus delivery requirement of the Securities Act,[7] both Part I–s and Part I–g must be delivered. Information contained in Part II, Other Information and Exhibits, would be filed as part of the registration statement with the Commission but, with the exception of certain third party financial statements, would not have to be made available to investors by a registrant. As discussed below, third party guarantor or insurer financial statements and certain sponsor financial statements, although not part of the prospectus, would have to be filed as part of the registration statement and supplied to investors by the registrant, upon request, at no charge.

A. Part I–s: Series Specific Information Required in a Prospectus

Item 2: Summary Information

Item 2 requires a summary of essential information regarding the trust and units of participation therein.[8] As reproposed, the item has been modified to combine the discussion of sale and redemption procedures in the item. A registrant, at its option, may present this information in either tabular or narrative form. Registrants using a narrative form would be expected to present the summary information in a clear, concise, and understandable manner.

For the initial offering, the information required by Item 2 would be as of the date of the financial statements. With respect to filing amendments, the summary information would have to be as of a date more than 45 days prior to the filing date of a post-effective amendment. The Commission originally proposed that summary information be of a date not more than 15 days prior to the filing date for post-effective amendments, but commenters argued that a 45 day period was more appropriate. Commenters also asserted that the information does not materially change during a 45 day period.

Item 3: Portfolio Schedule

Item 3(a) requires a schedule of the investments of the trust or series in tabular form providing certain basic information about each portfolio security. Item 3 would differ from current practice which provides for presentation of the schedule of investments with the other financial statements of the trust. Like the original proposal, this proposal would separate the portfolio schedule from the other financial statements. In accordance with current practice and the original proposal, the portfolio schedule would remain in the prospectus. With respect to the content of the portfolio schedule, commenters asserted that several of the proposed columns not currently required in Form S–6 would be of limited use to investors. This item has been revised to delete some of those columns.

Item 4: Financial Statements

Audited financial statements are currently required in the prospectus under Form S–6. As originally proposed, Form N–7 would have required the prospectus to contain a schedule of portfolio securities, and the remaining financial statements would have been made part of the SAI, which would not have been part of the prospectus but

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[6] See Item 4 of the attached Form N–7 and the discussion in this release, *infra* Part II, for more detail.

[7] Section 5(b)(2) [15 U.S.C. 77e(b)(2)]. To ensure that investors received both parts of the prospectus, the original proposal would have required that the two parts be affixed. Commenters objected to this proposed requirement. In the reproposal, registrants need not affix the two parts if each part of the prospectus clearly states, by caption, that it is not the entire prospectus. Failure to deliver both parts of the prospectus would violate section 10 of the Securities Act, and thus section 5 of that Act, and create a right of rescission for any purchaser under section 12 of the Securities Act [15 U.S.C. 771]. The prospectus delivery requirement applies to dealers in UIT units in addition to a UIT's sponsor, because section 24(d) of the 1940 Act [15 U.S.C. 80a-24(d)] eliminates the dealer's exception provided by section 4(3) of the Securities Act [15 U.S.C. 77d(3)] to the delivery requirements of section 5 so long as the issuer (which includes the sponsor) of a UIT is offering units for sale.

[8] The estimated current return ("ECR") of a UIT is part of the essential information required by Item 2. *See* Item 2, no. 5, of Form N–7. Several commenters questioned that provision of the original N–7 proposal which would have required registrants to include accrued interest as part of principal in the computation of ECR. The rationale for including accrued interest in the ECR calculation is that unlike an investment as part of principal in a bond, where accrued interest is returned to the purchaser in the first distribution, the accrued interest paid by a unit holder of a UIT is not returned until the unit is redeemed. Nonetheless, the Commission will reconsider the ECR calculation when it addresses UIT performance data issues in a separate release.

would have been made available to investors upon request. As reproposed, all required financial statements would be in the prospectus but the number of financial statements required in an initial offering prospectus would be reduced and the requirement that subsequent financial statements always be audited would be eliminated under certain conditions.

Reproposed Form N–7 would require only the schedule of investments and the statement of assets and liabilities, audited in conformance with Regulation S–X [17 CFR 210 *et seq.*], in the initial offering prospectus. To the extent the schedule of investments included in response to Item 3(a) provides the information required as part of the audited statement of assets and liabilities, that schedule need not be duplicated in response to Item 4. Because a UIT making an initial offering typically has no operations or changes in net assets about which to report, the statement of operations and the statement of changes in net assets would not be required in the initial offering prospectus.

A UIT prospectus used twenty months or more after the effective date of the registration statement would have to contain complete financial statements (balance sheet, statement of operations, and statement of changes in net assets) audited as of a date within twelve to eighteen months after the effective date. A registrant that maintains a current prospectus because of secondary market sales would have to update its financial statements within twenty months after its initial offering by filing, in a post-effective amendment, an audited balance sheet, an audited statement of operations, and an audited statement of changes in net assets in accordance with Regulation S–X as of a date no less than twelve and no more than eighteen months after the effective date. This post-effective amendment would make the complete financial statements part of the updated prospectus used for secondary market sales.

With respect to a UIT prospectus used after the audited financial statements discussed above no longer meet the requirements of section 10(a)(3) of the Securities Act, the Commission believes that it may be appropriate, while keeping the requirement for complete financial statements, to relax the requirement for an audit under certain conditions. Form N–7 has been revised so that a UIT maintaining a current prospectus could provide unaudited financial statements if (1) no substitution of portfolio securities has occurred and no securities have been added to the series during the previous fiscal year; (2) certain information (which typically could be satisfied by the usual format of the trustee's annual report) is filed as a post-effective amendment to the registration statement and made part of the secondary market prospectus;[9] (3) the trustee's financial statements are audited annually by an independent public accountant; and (4) the trustee receives an unqualified report on the internal accounting controls of the trustee's trust operations which is prepared annually by an independent accountant and made an exhibit to the UIT's registration statement.

Because a UIT series is an essentially static entity with a fixed portfolio, it shows little change in its audited financial statements after the first year, and there is little to audit except to verify that the trustee is properly receiving income and making disbursements. An initial audit performed after the registration statement of the series is effective can verify that the trustee's procedures for receiving and disbursing income are appropriate and verify the existence and custody of the portfolio securities. If the portfolio remains unchanged, subsequent audits may not be necessary. An audit of the series would be important, however, if substitutions are made or if new securities are added to the series portfolio. Among other things, this audit would examine whether the substituted or added securities substantially replicate the previous securities in quality, yield, and maturity, a requirement of the 1940 Act. If securities are eliminated (through call, maturity, or sale) but not replaced, a new audit would not appear necessary, although investors must have available information about the series' current portfolio, which can be provided through the trustee's annual report. The trustee's report would thus make current, in compliance with section 10(a)(3), the *financial statements.*[10]

If all four of the above conditions are met, the level of investor protection may be sufficiently high that the degree of protecton added by an audit would not justify the cost it adds to the operation of a unit investment trust. Specific comment is requested as to whether these conditions would adequately protect unit holders, or whether additional or alternative safeguards are needed.

Item 5: Risk Disclosure

Item 5 requires a brief discussion of the principal risk factors associated with investing in a particular series of a registrant. The discussion required by Item 5 would include those risk disclosures peculiar to individual securities in the portfolio as well as the risks associated with the portfolio being concentrated in any one issuer or industry. Any pending legal proceedings in which the registrant, trustee, sponsor, or principal underwriter is a party with respect to any of the portfolio securities would also be disclosed under this item. Risk disclosures which apply to all series of a trust (*e.g.*, the possibility of early prepayment of mortgages with respect to a Ginnie Mae trust) could be discussed in response to Item 9 in Part I–g, which requires a discussion of general risk disclosures applicable to the entire trust.

Item 6: Tax Status and Consequences

Under present practice, many prospectuses for series which invest wholly or largely in state or municipal bonds describe in great detail the tax law of each state from which any series might purchase bonds. As proposed, Form N–7 would have eliminated much of this disclosure but still would have required a statement of the tax status of the trust by registrant's counsel, discussion of applicable local and state tax law, and a description of the tax consequences resulting from the type of securities held in the portfolio.

Reproposed Form N–7 would require a registrant to briefly describe in the prospectus the tax consequences to investors of purchasing the trust's securities. Only the material features of the opinion of registrant's tax counsel and the consequences to the trust of holding certain types of bonds would be explained. Item 6 would discourage detailed discussion of state and local tax law. Registrants would be required to inform investors that the tax status of bonds issued by state and local jurisdictions may vary and that investors should consult an accountant or attorney to determine the effect of state or local law on the individual investor. These descriptions should be concise, understandable, and contain a minimum of legal citations and descriptions.

In addition to revising the substance of tax disclosure, reproposed Form N–7 would, in most cases, move the entire discussion of tax status to the series

[9] Only the sponsor, and not the trustee, would be liable under section 11 of the Securities Act [15 U.S.C. 77k] for that part of the trustee's report filed as an amendment to the registration statement.

[10] Rule 496, which deals with the contents of prospectuses used after nine months and the certified financial statements contained therein, would be amended to conform to this proposal, if adopted.

specific portion of the prospectus. Because each series is a separately taxable entity, placing the tax discussion in the specific part of the prospectus is appropriate and should result in a shorter prospectus, particularly for trusts comprised of a number of series that each invest solely in the municipal securities of a single state ("state series"). State series are attractive to residents of a state because their distributions typically are exempt from state as well as federal taxation. Some trusts, comprised of numerous different state series, now prepare prospectuses in two parts, with the generic part of the prospectus containing the tax disclosures for each series of the trust on a state-by-state basis. This results in a lengthy prospectus in which most of the tax discussion is wholly irrelevant to the investor of any given series, who is interested only in the tax consequence of investing in that series for the state in which he resides. Where the tax discussion of a series is the same as that of the other series within the trust, however, it could be placed in the generic portion of the prospectus. In either event, all tax discussion should appear in one place in the prospectus, whether it is in the generic or the specific portion.

Item 7: Underwriters

Under current practice, information regarding fees paid to, and profits from the sale of securities by, the underwriter must be disclosed in the prospectus. To the extent that the underwriter is an entity separate from the sponsor-depositor, no further profit information is required after the initial offering unless an existing series makes an additional offering.[11] Form N-7 as originally proposed would have required disclosure of the compensation of underwriters for each of the last three fiscal years in the SAI, which would also have included the profits made by the underwriter acting as a market-maker of trust units in the secondary market. Several commenters criticized the underwriter disclosure requirements of the proposal and suggested that it be modified to follow Item 508 of Regulation S-K [17 CFR 229.508]. The Commission has incorporated this suggestion, although it has also revised this item to more closely follow the format of Form N-2 [17 CFR 274.11a-1], the registration form used by closed-end investment companies. Because UITs distribute their securities in a manner similar to closed-end companies, it is appropriate to require comparable UIT underwriter disclosure.

As reproposed, Form N-7 would require all underwriter disclosure to be in the prospectus. Item 7 would require certain information regarding the identity of the underwriters, the nature of the underwriting agreement, the profits to be made, and discounts and commissions paid to underwriters. In response to comments, the Commission has deleted the proposed requirement to disclose the amount of commissions earned in the secondary market.[12] The nature of the underwriter's relationship to the sponsor and the amount of securities to be underwritten by each underwriter also would have to be disclosed. This information may be presented in either narrative or tabular form, so long as the disclosure is clear.

The Commission has reconsidered other underwriter disclosures as well. Because the underwriters' obligation in a distribution of UIT securities involves a finite number of securities and relates only to the intital offering period of a particular series, underwriter disclosure has been placed in Part I-s of the prospectus. In the reproposed form, after the initial offering period, underwriter information related only to the initial offering could be omitted except for underwriter information found in the portfolio schedule identifying any portfolio securities underwritten by the sponsor or any member of the syndicate that underwrites units of the trust.

B. Part II: Other Information and Exhibits

Item 16: Third Party Financial Statements

In recent years, a number of UIT sponsors have created trusts containing securities guaranteed or insured as to timely payment of principal and interest by third parties. These third party assurances, which include letters of credit and buy-back agreements, are often obtained to raise the rating of the portfolio securities. As originally proposed, Form N-7 would have required that UITs obtaining certain third party guarantees either (1) include the third party's financial statements as of the most recent fiscal year in the SAI, or (2) incorporate by reference such third party financial statements and deliver them with the SAI. This requirement would have been triggered when the guarantee related to securities constituting 25% or more of the value of the trust's securities as of the date of deposit in the trust. A number of commenters objected to this provision. They asserted, among other things, that this requirement would not further investor protection and that the possibility of being subjected to liability for the accuracy of third party financial statements would cause UIT sponsors to stop offering UITs which required such financial statements. Finally, several commenters suggested that the Commission continue its current practice of allowing UIT sponsors to state in the prospectus that the financial statements of third party guarantors are available upon request.

UITs, whose units or portfolio securities are materially affected by the presence of insurance or guarantees, should include the financial statements of the third parties providing those assurances in their registration statement so that investors can assess the increased safety added by those assurances. Accordingly, the reproposed form would require the financial statements of third party insurers as well as third party guarantors, when the third party provides insurance or a gurantee relating to 10% or more of the portfolio in cases where 25% or more of the value of the portfolio is guaranteed or insured as of the date of deposit in the trust. The Commission did not originally propose to require that the financial statements of UIT insurers be included in the registration statement. However, because insurance serves the same purpose as a guarantee, third party guarantors and third party insurers should be treated similarly. Third party financial statements would be included in Part II of the registration statement or incorporated by reference into Part II.[13] In either situation, the registrant would have to supply third party financial statements to investors upon request and at no charge. While third party financial statements would be a part of the registration statement, they need not be placed in the prospectus. In the interest of maintaining a short, readable prospectus, the portfolio schedule would contain information about the third party assurance and would disclose the

[11] Under secton 24(e) of the 1940 Act [15 U.S.C. 80a-24(e)], a UIT can amend its Securities Act registration statement after its effective date to increase the shares sold under that statement.

[12] A sponsor that is also the market maker would be required to disclose in response to Item 12, the procedures used for valuing units when making a market in these units.

[13] Of course, this requirement would result in potential liability under section 11 of the Securities Act for the sponsor with respect to the third party financial statements. The Commission appreciates registrants' concerns over the liability they might incur for third party financial statements. As discussed below, however, requiring third party financial statements in the UIT registration statement is consistent with Commission practice with respect to non-investment company issuers.

availability of the third party's financial statements.

Because of the importance of third party assurances in the investment decision of UIT purchasers, and because the assurances often relate to all or a significant part of the securities of a trust, it is appropriate to require that these financial statements be made part of the registration statement. In fact, the third party assurance may be the critical factor in the investment decision. In some cases, it is the existence of the third party assurance that raises the rating of the portfolio security to investment grade. Requiring third party financial statements in UIT registration statements would be consistent with non-investment company registration statements for which the financial statements of each guarantor of any class of securities of a registrant must be included in the registration statement.[14] These financial statements are necessary for an assessment by the investor of the third party guarantor or insurer to satisfy its commitment in the event of default of a portfolio security of the registrant.

III. Proposed Rule Amendments and Other Alternatives

One commenter suggested that the Commission could further reduce the paperwork burden on UITs by permitting them to offer and sell securities on a delayed or continuous basis ("shelf registration") under Securities Act Rule 415 [17 CFR 230.415]. The commenter suggested that UIT shelf registrations cover, at the registrant's option, some or all series of a UIT registered under the 1940 Act. The commenter suggested that a shelf registration statement for UITs contain a preliminary prospectus only for the first series to be offered under that registration statement. Thereafter, the registrant could apparently offer units of participation by the subsequent series of the same trust under the shelf registration without filing a registration statement for each series. The prospectus for each series would become part of the registration statement through the filing of a post-effective amendment, just as prospectuses used in Rule 415 offerings are filed as part of the registration statement. The commenter also proposed that Rule 415 be amended to permit UITs to register an indefinite number of securities instead of the definite number now required by Rule 415.

Reproposed Form N-7 and the related rule amendments are designed to promote the development of a shorter and more readable prospectus for each UIT series and at the same time provide UITs many benefits similar to those available to issuers under Rule 415. Developing shelf registration under Rule 415 for UITs would involve significant legal, practical, and policy issues and likely would require revision of many existing rules and procedures. Nonetheless, the Commission requests comment on whether Rule 415 shelf registration for UITs would offer significantly greater benefits to UITs and investors than the Commission's current proposals, and would warrant developing new proposals for UIT shelf procedures in lieu of adopting the instant proposals. Commenters should consider how registration procedures operate under Rule 415 and Rule 487, the Commission's goal of brief and more readable UIT prospectuses, and the Commission's long-held view that each UIT series is a separate Securities Act issuer. The Commission also requests comment on further modifications to Rule 485. These matters are discussed below.

A. Shelf Registration under Rule 415—Current Practice

Rule 415 permits a qualified issuer to sell securities to the public from time to time as market conditions dictate based on a previously effective registration statement that remains effective.[15] The issuer must file the prospectus used in an offering with the Commission within five days after commencement of the offering.[16] Information concerning shelf offerings is reported on the company's Form 8-K, 10-Q, and 10-K under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] ("1934 Act").

Shelf registrants whose offerings most closely resemble those of UITs are issuers of interests in a pool of mortgage or mortgage-related securities ("MRS"). Under Rule 415, a typical MRS issuer will register a large quantity of securities using a registration statement containing what is referred to as a core prospectus. The core prospectus is a lengthy document, often as long as seventy pages,[17] that contains disclosure about each type of mortgage that could constitute part of a pool later to be offered. Each possible offering under the core prospectus is supplemented by an offering-specific document which describes in greater detail the specifics of that particular offering. The offering-specific document, along with the core prospectus, is used as the preliminary "red herring" prospectus to solicit indications of interests in specific offerings to be made by the issuer. The MRS issuer generally solicits interest in a specific shelf offering without first assembling the portfolio of mortgages or mortgage-related securities. When the offering is fully subscribed and sales have begun, the issuer delivers the offering-specific document to the investor at the time of sale and to the Commission within five days after the effective date of the registration statement or the commencement of the public offering, whichever occurs later. The offering-specific document generally describes the type, yield, and maturity of the mortgages that will constitute the pool, and is often an additional twelve to twenty pages long. Although investors know what type of mortgage-related security the issuer intends to purchase with the proceeds, because the offering specific document does not identify specific mortgages or mortgage-related securities, investors, in effect, purchase interests in an unidentified pool of collateralized mortgages. MRS shelf offerings are usually marketed to institutional investors rather than "retail" investors or members of the general investing public.

B. Rule 487—Current Practice

Like Rule 415, Rule 487 gives issuers control over when offerings are brought to market and allows those decisions to be based more on market and business factors than on Commission registration requirements. After the registration statement of the first series of a UIT becomes effective,[18] Rule 487 permits a

[14] 17 CFR 210.3-10. *See* Rel. No. 33-6359 (Nov. 6, 1981).

[15] Rule 415 permits a typical shelf issuer to register an amount to securities that the issuer reasonably expects to sell within two years from the effective date of the registration statement [17 CFR 230.415(a)(2)]. Issuers of mortgage-related securities (discussed *infra*) are not subject to this two year limitation.

[16] Under proposed Rule 430A and related amendments to Rule 424, the prospectus containing the Rule 430A information must be filed on the date of first use in connection with a public offering or sale and in no event later than five days after effectiveness. *See* Rel. Nos. 33-6672, IC-15373 (Oct. 27, 1986).

[17] When it proposed a simplified prospectus for mutual funds, the Commission stated that under normal circumstances a mutual fund prospectus need not exceed twelve pages. *See* Rel. Nos. 33-6447; IC-12927 (December 21, 1982). The Commission believes readable UIT prospectuses of similar length will be possible after the adoption of Form N-7 even though the Commission recognizes that each series of a UIT would be required to have its own prospectus.

[18] This first series of a UIT must be filed in a manner that permits a full review by Commission staff prior to the effectiveness of the registration statement.

UIT to choose the date and time for the registration statement of each subsequent series to become effective, if the registrant identifies a previous registration statement of a series that has been declared effective by the Commission and represents to the Commission that there are no material differences between the previous and current offerings.

Currently, a UIT bringing a new series to the market makes an initial filing under Rule 460 [17 CFR 230.460] with the Commission which it can use as a preliminary "red herring" prospectus to gather solicitations of interest.[19] For this reason, and to comply with state filing requirements,[20] a UIT sponsor may have several series in registration at any one time whose registration statements are not yet effective. When the series has been fully subscribed or market conditions dictate, the sponsor will file its pricing amendment with an updated registration statement under Rule 487 and designate the effective time and date of the registration statement.[21] This filing includes the portfolio schedule of the UIT, which must have a portfolio of specified securities at the time of sale. Unlike MRS trusts under Rule 415, a UIT cannot be sold as an unidentified pool. Finally, a UIT must make a third filing to file its definitive prospectus.[22]

C. Rule 415 Approach—Request for Comments

Although Rule 487, like Rule 415, permits issuers to time the sale of securities to market conditions, the Commission requests comment on whether greater reductions in filing and disclosure burdens can be realized for UITs by developing a shelf registration system similar to that of Rule 415. Any shelf registration rule for UITs would need to be consistent with the Commission's goal of creating simplified investment company prospectuses. A major purpose in the reproposal of Form N–7 has been to shorten and simplify the prospectus for each series offered by a UIT to make it more readable and understandable by, among other things, re-allocating series-specific information from the generic to the specific portion of the prospectus. A long core prospectus, of the type now used by MRS issuers, is not consistent with the goal of investment company prospectus simplification and may not be appropriate for retail investors who purchase UIT securities.

The Commission requests that commenters take into account the nature of the typical UIT investor in their discussion of shelf registration and consider whether Part I–g of reproposed Form N–7, the generic portion of the prospectus, would operate effectively as a core prospectus for UITs. The Commission requests comment on whether reporting requirements, under the 1934 Act or otherwise, should be established for UITs if shelf registration is permitted.[23]

A shelf rule for UITs also would have to be harmonized with the Commission's longstanding position that each series of a UIT as well as the UIT sponsor (*see* note 2 *supra*) is a separate issuer under the Securities Act.[24] This has not been a concern under Rule 415 because, in most cases, all the securities offered under a shelf registration are issued by a single issuer.[25] Commenters who discuss the development of a shelf rule for UITs should address the following issues: (1) Whether the separate issuer status of both the series and the sponsor of a UIT can be reconciled with the Rule 415 approach that appears to rely on the concept of a single issuer; (2) whether any increased sponsor liability would result from a shelf rule for UITs that treats only the sponsor as the issuer; (3) how separate prospectuses for each series in which a secondary market is being made would be kept current under a shelf registration rule and what type of filing procedures would be needed to track each series; [26] and (4) the impact of requiring a UIT to pay its registration fees for all securities which are expected to be sold under a shelf registration at the time the registration statement is initially filed.[27]

D. Proposed Rule 487 Approach—Request for Comments

An alternative method of achieving one of the principal benefits of shelf registration, permitting UIT issuers to avoid the paperwork burden associated with making a registration statement effective immediately prior to offering securities, may be available. While the Commission is not publishing the text of a rule amendment, it is proposing to amend Rule 487 to achieve further efficiencies for UIT sponsors within the current regulatory framework and accomplish the Commission's goal of regulatory framework and accomplish the Commission's goal of simplified UIT prospectuses, and its requests comment on this proposal. The discussion below describes the background for, and substance of, the proposed amendment to Rule 487.

[19] A UIT will typically use the prospectus of the last effective series with a sticker representing that the new series will not materially differ.

[20] Most states require a UIT to have been in registration with the Commission for at least ten days before the series can be sold in the state. The Commission requests comment on whether shelf registration for UITs under Rule 415 would be consistent with and accommodated by state law registration and fee payment requirements.

[21] The sponsor may choose to have the registration statement become effective upon the filing of the Rule 487 pricing amendment.

[22] Currently, a UIT can file its definitive prospectus under either Rule 424 or Rule 497. The Commission recently proposed to amend Rule 424 to make Rule 497 the exclusive prospectus filing rule for investment companies. *See* Rel. Nos. 33–6660, IC–15315 (Sept. 17, 1986).

[23] Section 30(d) of the 1940 Act [15 U.S.C. 80a–30(d)] gives the Commission the authority to require all investment companies to provide, at least semi-annually, reports to shareholders. It has adopted rules which require only management investment companies, and UITs that invest only in one management investment company, to provide reports to shareholders [17 CFR 270.30d–1, 30d–2]. The trustee of a UIT, however, provides unit holders with an annual report as a matter of practice. Commission rules currently allow a UIT to satisfy its requirements to file periodic reports with the Commission under both the 1934 Act and the 1940 Act by filing Form N–SAR. *See* Rule 30a–1 [17 CFR 270.30a–1].

Some MRS issuers file abbreviated annual reports on Form 10–K but do not file quarterly reports on Form 10–Q. Instead, these issuers file a monthly report under cover of Form 8–K in which the trustee provides information concerning the assets held in the trust. These issuers must file this information because the sponsor sells interest in a trust without first designating the specific securities that will constitute the trust. Because the 1940 Act requires a UIT to consist of a pool of specified securities at the time the registration statement of each series becomes effective, the Form 8–K filing procedure used by MRS trusts would not be an appropriate means for UITs to provide investors with information identifying their portfolios. In view of this essential difference between MRS trusts and UITs, the Commission requests comment on how a shelf registration rule for UITs could be developed so that the portfolio schedule specifying the portfolio securities is available to investors at the time of the offering.

[24] The Commission restated this position when it adopted Rule 487. *See* Rel. Nos. 33–6401, IC–12423 (May 7, 1982).

[25] On the other hand, certain MRS issuers rely on Rule 415 to make shelf registrations for periodic offering of securities in cases where each offerings involves the creation of a discrete trust containing the pool of securities forming the basis for the MRS offering. For 1934 Act reporting purposes, each new trust files as a separate issuer. While each offering proceeds on the basis of a Rule 424 prospectus without a new Securities Act registration statement identifying the new trust as an issuer, it might be argued that each trust involved is a separate issuer for purposes of the Securities Act as well.

[26] A sponsor which maintains a secondary market in units of any particular series must have a current prospectus under section 10(a)(3) of the Securities Act for that series.

[27] Proposed Rule 24f–3, which would simplify UIT fee payment provisions, was developed within the existing UIT registration framework. Currently, issuers under Rule 415 pay their registration fees at the time the initial registration statement is filed.

Because the registration statement of a series filed under Rule 487 is not reviewed by the staff, the Commission believes that the amount of material filed under Rule 487 could be significantly reduced by permitting a filing made under that rule to consist of (1) the facing sheet of the registration statement, (2) undertakings to prospectively incorporate by reference the definitive prospectus [28] and any portion of Part II of the registration statement, such as the exhibits, which may be specific to the series being registered, and (3) those portions of Part II not specific to the series which could be incorporated by reference from the registration statement of a previous series. The Rule 487 filing also would have to contain the required signatures. The definitive prospectus and the series-specific exhibits would be filed within five days after commencement of the public offering under Rule 497(b). The series could thus avoid sending to the Commission copies of the new registration statement which now is filed at the time the pricing amendment is filed. This amendment would retain separate issuer status and liability and could result in only one printing of the registration statement for each series, the one that includes the definitive prospectus. Commenters should address means by which the requirement that a UIT contain a specific portfolio of securities at the time of sale could be enforced if Rule 487 filings are abbreviated. The Commission requests specific comments on anticipated cost savings as well as any technical drafting changes to Rule 487 and other rules applicable to UITs that would efficiently implement this proposal.

E. Previously Proposed Amendment To Rule 487

The Commission is deferring final action on a previously proposed amendment to Rule 487 under the Securities Act until it takes final action on the reproposed form and the new proposed amendments. Under the previously proposed amendment to Rule 487, sponsors of a trust which continuously create new "follow-on" series could no longer rely on Rule 487 indefinitely. Rather, after two years had elapsed since staff review of the one or more similar series, the next series could not become effective automatically pursuant to Rule 487, but would have to be filed for full staff review. The amendment, which received no negative comment, would provide the staff with a more efficient mechanism to monitor UIT disclosure practices. For a complete discussion of the proposed amendment to Rule 487, see Part VI of Release 33-6580.

F. Other Proposed Rule Amendments

To implement Form N-7, the Commission is proposing technical amendments to Rules 8b-11 and 8b-12 under the 1940 Act and Rules 495 and 496 under the Securities Act.

IV. Guidelines

The draft Guidelines are being republished with minor revisions. Guide 3, which deals with restricted securities held by a trust, would be revised to continue the current practice which permits a UIT to invest up to 40%, under certain conditions, of the face amount of the portfolio securities of the trust in restricted securities. Restricted securities, for purposes of this guideline, are securities that cannot be sold publicly by the trustee without registration under the Securities Act. Guide 3, as originally proposed, would have contained a 25% limit on restricted securities.

Guides 4, 7, 10, and 20 have also been modified to incorporate the suggestions of a number of commenters.

V. Transition Period

Form N-7, if adopted, would replace Form N-8B-2 under the 1940 Act and Form S-6 under the Securities Act for UITs other than separate accounts. To ensure an orderly adjustment to the new form, the Commission expects to provide a one year transition period during which all registrants could use either the existing forms or the new form. When it adopted Forms N-1A, N-3, and N-4, the Commission provided for a one year transition period. After the expiration of the transition period, all UITs other than separate accounts would have to use Form N-7. The Commission solicits comment on the most efficient manner of handling the conversion, taking into consideration the burden on registrants and the need for the Commission and investors to have all UITs use the same from and provide comparable disclosures.

VI. Cost/Benefit of Proposed Action

The cost to registrants of compliance will vary considerably depending on several factors, *e.g.*, whether the UIT is filing a new registration statement or an annual update of a previously effective registration statement (*i.e.*, a post-effective amendment); whether the unit trust being registered presents novel and complex issues or is similar to other unit trusts; and whether pre-effective amendments are required in response to staff comments.

Proposed Form N-7 should result in a reduction in preparation time for the registration statement of a UIT. The proposed form would (i) integrate the reporting and disclosure requirements of both the Securities Act and the 1940 Act for UITs into one disclosure document, (ii) shorten and simplify the prospectus delivered to investors, and (iii) encourage a generic portion of the prospectus which could be used for subsequent series that are sufficiently similar to the original series. The Commission estimated that a registrant will spend approximately 150 hours to complete Form N-7, as opposed to an estimate of 187 hours to complete Forms S-6 and N-8B-2, thereby reducing the overall burden of preparation of a registration statement for UITs by approximately 37 hours. The Commission believes that the amount of staff time required to review UIT filings on Form N-7 will be less than the amount of staff time currently required to review UIT filings on Form 7-8B-2 and S-6. The Commission requests comment on its assessment of the cost and benefits of the proposal, including specific estimates of any costs and benefits perceived by commenters.

VII. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Act Analysis in accordance with 5 U.S.C. 603 regarding reproposed Form N-7. The Analysis considers the impact Form N-7 would have on small UITs and discusses alternatives considered by the Commission for small UITs. The Analysis notes that reproposed Form N-7 would (i) integrate the reporting and disclosure requirements of the Securities Act and the 1940 Act into one document; (ii) codify the disclosure standards that have been developed by the staff of the Commission for UITs; and (iii) shorten and simplify the prospectus now provided to investors. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Jay B. Gould, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5-2, Washington, DC 20549.

List of Subjects

17 CFR Parts 230 and 239

Reporting and Recordkeeping Requirements and Securities.

[28] The concept of prospective incorporation by reference has been articulated by the Commission in connection with proposed Rule 430A. *See* Rel. Nos. 33-6672, IC-15373 (Oct. 27, 1986).

17 CFR Parts 270 and 274

Investment Companies, Reporting and Recordkeeping Requirements and Securities.

Text of Rules and Form

The commission is proposing to amend Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Regulation C of Part 230 continues to read in part

Authority: Sections 230.400 to 230.499 issued under sections 6, 8, 10, 19, 48 Stat. 78, 79, 81, as amended, 85, as amended; 15 U.S.C. 77f, 77h, 77j, 77s. * * *

2. By proposing to revise paragraphs (a), (c), and (d) of § 230.495 as follows:

§ 230.495 Preparation of registration statement.

(a) A registration statement on Form N–1A, Form N–3, Form N–4, or Form N–7 shall consist of the facing sheet of the applicable form; a cross-reference sheet; a prospectus containing the information called for by such form; the list of exhibits, undertakings and signatures, and other information required to be set forth in such form; financial statements and schedules; exhibits; any other information of documents filed as part of the registration statement; and all documents or information incorporated by reference in the foregoing (whether or not required to be filed)

* * * * *

(c) In the case of a registration statement filed on Form N–1A, Form N–3, Form N–4, or Form N–7, Parts A and B (or Part I of Form N–7) shall contain the information called for by each of the items of the applicable Part, except that unless otherwise specified, no reference need be made to inapplicable items, and negative answers to any item may be omitted. Copies of Parts A and B (or Part I of Form N–7) may be filed as part of the registration statement in lieu of furnishing the information in item-and-answer form. Whenever such copies are filed in lieu of information in item-and-answer form, the text of the items of the form is to be omitted from the registration statement, as well as from Parts A and B (or Part I of Form N–7), except to the extent provided in paragraph (d) of this rule.

(d) In the case of a registration statement filed on Form N–1A, Form N–3, Form–4, or Form N–7, where any item of those forms calls for information not required to be included in Parts A and B (or Part I of Form N–7) (generally Part C or Part II of these forms) the text of such items, including the numbers and captions thereof, together with the answers thereto, shall be filed with Parts A and B (or Part I of Form N–7) under cover of the facing sheet of the form as a part of the registration statement. However, the text of these items may be omitted if the answers are prepared to show what the item covers. If an item is inapplicable, or the answer to it is negative, so state. Any financial statements not required in Parts A and B (or Part I of Form N–7) shall also be filed as part of the registration statement proper, unless incoporated by reference under Rule 411 (§ 230.411 of this chapter).

3. By proposing to revise § 230.496 as follows:

§ 230.496 Contents of prospectus used after nine months.

In the case of a registration statement filed on Form N–1A, Form N–3, Form N–4, or Form N–7 there may be omitted from any prospectus or, if applicable, Statement of Additional Information used more than 9 months after the effective date of the registration statement any information previously required to be contained in the prospectus or the Statement of Additional Information insofar as later information covering the same subjects, including, except in the case of a registration form filed on Form N–7, the latest available certified financial statements, as of a date not more than 16 months prior to the use of the prospectus or the Statement of Additional Information is contained therein.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

4. The authority citation for Part 239 continues to read, in part,

Authority: The Securities Act of 1933, 15 U.S.C. 77a *et seq.* * * *

5. By adding § 239.16A to read as follows:

§ 239.16A. Form N–7, registration statement of unit investment trusts other than separate accounts of insurance companies.

Form N–7 shall be used for the registration under the Securities Act of 1933 of securities of unit investment trusts other than separate accounts of insurance companies. This form shall be used for the registration of unit investment trusts other than separate accounts of insurance companies under Section 8(b) of the Investment Company Act of 1940 (§ 274.12A of this chapter).

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

6. The authority citation for Part 270 continues to read, in part.

Authority: Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80a–37, The Investment Company Act of 1940, as amended; 15 U.S.C. 80–1 *et seq.*

7. By proposing to revise paragraph (b) of § 270.8b–11 as follows:

§ 270.8b–11 Number of copies-signatures-binding.

* * * * *

b. In the case of a registration statement filed on Form N–1A, Form N–3, Form N–4, or Form N–7, three complete copies of each part of the registration statement (including, if applicable, exhibits and all other papers and documents filed as part of Part C (or Part II of Form N–7) of the registration statement) shall be filed with the Commission.

* * * * *

8. By proposing to revise paragraph (b) of § 270.8b–12 as follows:

§ 270.8b–12 Requirements as to paper, printing and language.

* * * * *

(b) In the case of a registration statement filed on Form N–1A, Form N–3, Form N–4, or Form N–7, Part C of Form N–1A, Form N–3, Form N–4, and Part II of Form N–7 of the registration statement shall be filed on good quality, unglazed, white paper, no larger than 8½ by 11 inches in size, insofar as practicable. The prospectus and, if applicable, the Statement of Additional Information, however, may be filed on smaller-sized paper provided that the size of paper used in each document is uniform.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

9. The authority citation for Part 274 continues to read, in part,

Authority: The Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.*

10. By proposing to add § 274.12A to read as follows:

§ 274.12A Form N-7, registration statement of unit investment trusts other than separate accounts of insurance companies.

Form N-7 shall be used as a registration statement to be filed under section 8(b) of the Investment Company Act of 1940 by unit investment trusts other than separate accounts of insurance companies. This form shall be used for registration under the Securities Act of 1933 of the securities of unit investment trusts other than separate accounts of insurance companies.

By the Commission.

Jonathan G. Katz,

Secretary.

March 9, 1987.

BILLING CODE 8010-01-M

FORM N-7

U.S. Securities and Exchange Commission
Washington, D.C. 20549

OMB APPROVAL
OMB Number: 3235-0338
Expires: Pending Action

File Number:

811-	33-	2-

(Check appropriate box or boxes.)

☐ REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

☐ Pre-Effective Amendment No. _____

☐ Post-Effective Amendment No. _____

and/or

☐ REGISTRATION STATEMENT UNDER THE INVESTMENT COMPANY ACT OF 1940

☐ Amendment No. _____

Exact Name of Registrant:

Exact Name of the Trust as Registered Under the 1940 Act:

Name of Sponsor:

Address of Sponsor's Principal Executive Offices, including Zip Code:	Sponsor's Telephone No. including Area Code:
Name and Address of Agent for Service, including Zip Code:	Approximate Date of Proposed Public Offering:

[If the registration statement is filed pursuant to Rule 487, include the following information:]

It is proposed that this filing will become effective on (date) at (time) pursuant to Rule 487:

[If the registration statement is filed as a post-effective amendment, include the following information:]

It is proposed that this filing will become effective: (check appropriate box)

☐ immediately upon filing pursuant to paragraph (b) of Rule 485

☐ 60 days after filing pursuant to paragraph (a) of Rule 485

☐ on (date) _____ pursuant to paragraph (b) of Rule 485

☐ on (date) _____ pursuant to paragraph (a) of Rule 485

Calculation of Registration Fee under the Securities Act of 1933

Title of Securities Being Registered	Amount Being Registered	Proposed Maximum Offering Price Per Unit	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee

Instructions:

The "Approximate Date of Proposed Public Offering" and the table showing Calculation of Registration Fee under the Securities Act of 1933 should be included when securities are being registered under the Securities Act of 1933.

Registrants that are registering an indefinite number of securities for sale in the secondary market under the Securities Act of 1933 pursuant to [proposed] Investment Company Act Rule 24f-3 should include the declaration required by Rule 24f-3(a)(1) on the facing sheet, instead of, or in addition to, the Securities Act registration fee table.

Fill in the 811-_____, and 33-_____ or 2-_____ blanks only if these filing numbers (for the Investment Company Act of 1940 registration and the Securities Act of 1933 registration respectively) have already been assigned by the Securities and Exchange Commission in the course of previous filings. If a single form is used to register more than one series or portfolio under the Securities Act of 1933, list each 33-_____ or 2-_____ number assigned.

Contents of Form N-7

General Instructions

A. Who May Use Form N-7

Form N-7 shall be used by all unit investment trusts, except for insurance company separate accounts, for filing: (i) an initial registration statement under Section 8(b) of the Investment Company Act of 1940 Act ("1940 Act") [15 U.S.C. 80a-8(b)] and any amendments to it; (ii) a registration statement under the Securities Act of 1933 ("Securities Act") and any amendments to it; or (iii) any combination of the above 1940 Act and Securities Act filings.

B. Registration Fees

Section 6(b) of the Securities Act [15 U.S.C. 77f(b)] and Rule 457 [17 CFR 230.457] set forth the fee requirements under the Securities Act. Rule 9b-6 under the 1940 Act [17 CFR 270.8b-6] sets forth the fee for filing an initial registration statement under that Act. The 1940 Act fee is in addition to the fee required under the Securities Act but is only required for the initial registration of a trust on Form N-7. Registrants that are increasing the amount of securities registered are directed to Rule 24e-2 [17 CFR 270.24e-2] under the 1940 Act to compute the filing fee. Registrants that are registering an indefinite amount of their securities for secondary market purposes are directed to [proposed] Rule 24f-3, under the 1940 Act.

C. Number of Copies

Filings of registration statements on Form N-7 shall contain the number of copies specified in Securities Act Rule 402 [17 CFR 230.402], except that seven additional copies of the registration statement shall be furnished to the Commission, instead of the ten additional copies required by Rule 402(b).

Filings of amendments on Form N-7 shall contain the number of copies specified in Securities Act Rule 472 [17 CFR 230.472], except that there shall be filed with the Commission three additional copies of such amendment, two of which shall be marked to indicate clearly and precisely, by underlining or in some other appropriate manner, the changes made in the registration statement by the amendment, instead of the eight additional copies with at least five marked as required by Rule 472(a) [17 CFR 230.472(a)].

D. Special Terms

1. Trust. The term "trust" means a unit investment trust as defined in Section 4(2) of the 1940 Act [15 U.S.C. 80a-4(2)]. Unless the context indicates otherwise, the term "trust" refers to the unit investment trust series on behalf of which the Securities Act registration statement is filed.

2. Sponsor. The term "sponsor" means the person primarily responsible for the organization of the Registrant or who has continuing responsibilities for the administration of the affairs of the Registrant other than as a trustee or custodian. The term includes the depositor of the Registrant. If there is more than one sponsor, the information called for in this form about the sponsor shall be provided for each sponsor.

3. Unit Holder. The term "unit holder" means the holder of a security or securities representing an undivided interest in a unit investment trust.

4. Portfolio Company or Portfolio Security. The terms "portfolio company" or "portfolio security" mean specifically any company or security in which the Registrant invests.

E. Application of General Rules and Regulations. If the registration statement is being filed under both the Securities and 1940 Acts or under the Securities Act only, the General Rules and Regulations under the Securities Act, particularly Regulation C [17 CFR 230.400-497], shall apply, and compliance with them will be deemed to meet any corresponding rules for registration under the 1940 Act. However, if the registration statement is being filed only under the 1940 Act, the General Rules and Regulations under that Act, particularly Regulation 8b-1 to 8b-32 [17 CFR 270.8b-1 to 8b-32], shall apply.

F. Amendments

Where Form N-7 has been used to file a registration statement under both the Securities Act and 1940 Act, any amendments of that registration statement shall be deemed to be filed under both Acts unless otherwise indicated on the facing sheet.

G. Incorporation by Reference

Rule 411 under the Securities Act [17 CFR 230.411], and Rules 0-4, 8b-23, 8b-24, and 8b-32 under the 1940 Act [17 CFR 270.0-4, 270.8b-23, 270.8b-24, and 270.8b-32] contain guidance on incorporating information or documents by reference into a registration statement. In general, a Registrant may incorporate by reference in the answer to any item of Form N-7 not required to be in the prospectus, any information elsewhere in the registration statement, or in other statements, applications, or reports filed with the Commission.

Registrants incorporating by reference third party financial statements in response to Item 16(b) also must inform investors that the financial information contained in that item, third party financial statements, is available from the Registrant upon request and at no charge.

The rules on incorporation by reference under both the Securities Act and the 1940 Act are subject to the limitations of Rule 24 of the Commission's Rules of Practice [17 CFR 201.24]. Since Rule 24 may be amended from time to time, Registrants are advised to review the rule prior to incorporating by reference any document as an exhibit to a registration statement.

H. Documents Comprising Registration Statement or Amendment

1. A registration statement or an amendment to it filed under both the Securities Act and 1940 Act shall consist of the facing sheet of the Form; the cross-reference sheet required by Rule 495(a) under the Securities Act [17 CFR 230.495(a)]; responses to Part I (or Parts I-s and I-g, if the prospectus is prepared in two parts) and Part II of Form N-7; required signatures; all other documents or information filed as a part of the registration statement; and all documents or information incorporated by reference in the foregoing (whether or not required to be filed).

2. A registration statement or an amendment to it which is filed under only the Securities Act shall contain all the information and documents specified in paragraph 1 of this Instruction H, except for an amendment to a Securities Act registration statement filed only under Sections 24(e) or (f) of the 1940 Act [15 U.S.C. 80a-24(e), 80a-24(f)]

3. An amendment to a Securities Act registration statement filed only to register additional securities under Section 24(e) of the 1940 Act or an indefinite number of securities for secondary market purposes under Section 24(f) of the 1940 Act need only consist of the facing sheet of the Form, required signatures, and, if filed pursuant to Section 24(e) of the 1940 Act, an opinion of counsel as to the legality of the securities being registered. Registrants are reminded that an opinion of counsel must accompany a [proposed] "Rule 24f-3 Notice" filed by Registrants that have registered an indefinite number of their securities.

4. A registration statement or an amendment to it which is filed under only the 1940 Act shall consist of the facing sheet of the Form, a cross-reference sheet, responses to all items of Parts I-s and I-g except Item 1, responses to all items of Part II except Item 13 (4) and (7)-(12), required signatures, all other documents or information filed as part of the registration statement and all documents or information incorporated by reference in the foregoing (whether or not required to be filed).

I. Preparation of the Registration Statement or Amendment

Form N-7 has two parts. Part I relates to the prospectus required by Section 10(a) of the Securities Act; Part II relates to other information that must be in the registration statement.

The Prospectus: Parts I-s and I-g

The purpose of the prospectus is to provide material information about the Registrant and its securities in a way that will help investors decide whether to buy the securities being offered. The prospectus should be clear and concise. Avoid the use of technical or legal terms, complex language, or excessive detail.

Any trust whose series are eligible to file a Securities Act registration statement under Rule 487 [17 CFR 230.487] of the Securities Act may structure the prospectus of each of those eligible series to consist of two parts. If a trust does so, then, except as otherwise stated herein, the first part of the prospectus shall consist of the information required by Part I-s.

Part I-s requires disclosure of the risks peculiar to that trust series, including the credit worthiness of the issuers the trust invests in, any novel or unusual features of the securities deposited in that series, and any risks related to the composition of the portfolio, e.g., concentration. If risk disclosure for the types of securities which may be included in the trust appears in Part I-g, provide in Part I-s a cross-reference to Item 9 of Part I-g.

The second part of the prospectus ("Part I-g") shall consist of all disclosure items which apply to all series of a trust, including general risk disclosures about securities.

Parts I-s and I-g must be delivered together. If the two parts are not affixed, both parts must include prominent captions and a legend stating that the prospectus consists of two parts. Registrants are reminded that failure to deliver both parts of the prospectus would violate Sections 5 and 10 of the Securities Act, and create a right of rescission for any purchaser under Section 12 of the Securities Act [15 U.S.C 771].

General Instructions for Parts I-s and I-g

1. The information in the prospectus should be arranged to make it easy to understand the organization and operation of the Registrant. Descriptions of practices that are required by law generally should not include detailed discussions of the law itself. If the registrant prepares the prospectus in two parts, the information required by Parts I-s and I-g should substantially follow the contents of the Form for those parts. Items 1 and 2 must be the first two items in the prospectus. Responses to items that use terms such as "list" or "identify" should include a minimum of explanation or description.

2. The prospectus may contain more information than called for by this Form, provided that the information is not incomplete, inaccurate, or misleading and does not, because of its nature, quantity, or manner of presentation obscure or impede understanding of required information. Please note paragraph 4 below - "Instructions for charts, graphs, tables and sales literature."

3. The statutory provisions relating to the dating of the prospectus apply equally to the dating of Item 16 of Part II for purposes of Rule 423 under the Securities Act [17 CFR 230.423]. Further, Item 16 of Part II, Third Party Financial Statements, should be made available at the same time that the prospectus becomes available for purposes of Rules 430 and 460 under the Securities Act [17 CFR 230.430, 230.460].

4. Instructions for charts, graphs, tables, and sales literature:

(a) A Registration Statement on this Form may include any chart, graph, or table that is not misleading.

(b) If "sales Literature" is included in the prospectus, the issuer should be aware of the following:

(1) sales literature should not be of such quantity as to significantly lengthen the prospectus, and it should not be so placed as to obscure essential disclosure; and

(2) members of the National Association of Securities Dealers, Inc. ("NASD") are not relieved of the filing and other requirements of the NASD for investment company sales literature (See Securities Act Rel. No. 5359 (January 26, 1973) [38 FR 7220 (March 19, 1973)]).

J. Issuers of Periodic Payment Plans

A unit investment trust that issues periodic payment plan certificates using Form N-7 also must comply with all instructions and required disclosures specified in the Appendix to Form N-7.

PART I - INFORMATION REQUIRED IN A PROSPECTUS

Part I-s Information Specific to a Series of a Trust Required in a Prospectus

Item 1. Cover Page

(a) The outside cover page must contain the following information:

(i) the Registrant's name;

(ii) the sponsor's name;

(iii) an identification of the type of unit investment trust, e.g., tax-exempt bond trust, corporate bond trust, or a brief statement of Registrant's investment objective(s);

(iv) a statement or statements that (A) the prospectus sets forth information about the Registrant that a prospective investor ought to know before investing; (B) the prospectus should be retained for future reference; and (C) a Part II, Other Information and Exhibits about the Registrant, has been filed with the Commission. If financial statements of any third party are required in the registration statement under Item 16, the statement should explain that these financial statements are included in Part II and are available from the Registrant without charge to investors upon written or oral request;

(v) If the prospectus consists of two parts, a statement to that effect and a brief description of each part including a reference to the trust or type of series to which Part I-g applies;

(vi) the date of the prospectus and the date of Part II, Other Information;

(vii) the statement required by Rule 481(b)(1) [17 CFR 230.481(b)(1)] under the Securities Act; and

(viii) such other items of information as are required by rules of the Commission.

(b) The cover page may include other information, but any additional information should not, either by its nature, quantity, or manner of presentation, obscure or impede understanding of the information required to be presented.

Item 2. Summary Information

Provide at least the following summary information regarding the series as of the date of the financial statements for the initial offering of trust units. For filings of amendments other than those related to the initial offering, provide the information as of a date not more than 45 days before the date of filing.

Summary Information

1. Number of units outstanding

3. Prices per unit:

(a) public offering price on initial offering;

(b) sales charge on initial offering;

(c) public offering price in secondary market offering;

(d) sales charge in secondary market offering;

(e) repurchase price of sponsor;

(f) redemption price; and

(g) any provisions for reduction of unitholders' account by trustee or charges for reinvestment of dividends or other distributions.

4. Third party enhancements

If the portfolio securities of the Registrant or units offered by the Registrant have received a rating from a rating organization that has been affected by any third party insurance or guarantee made with respect to the deposit or holding of the securities in the trust series, so state.

5. Estimated current return

6. Fees and expenses

   (a) trustee's annual fee;

   (b) sponsor's annual fee;

   (c) evaluator's annual fee;

   (d) insurance premiums or guarantee expenses on portfolio securities;

   (e) any other significant fee or expense; and

   (f) total fees and expenses.

7. Distributions

   (a) brief description;

   (b) frequency; and

   (c) minimum distribution (if any).

8. Valuation

   (a) evaluator's name; and

   (b) a description of any affiliation with the sponsor or trustee.

9. Purchase and redemption of units

   Briefly state the procedures for purchase and redemption of units by investors.

10. Termination

   (a) mandatory termination date; and

   (b) conditions for earlier termination.

Instructions

Item 2, No. 3:

Indicate briefly the components of the public offering price. State the sales charge both as a percentage of the public offering price and as a percentage of the net amount invested. If calculated differently from the initial offering, state the public offering price and sales charge for sales of units in the secondary market. Describe in a footnote any provisions relating to accrued interest.

If accrued interest earned by the portfolio securities is not remitted to unit holders until units are redeemed or the trust is liquidated, the amount of accrued interest should be included in or added to the cost of purchase. Any accrued interest should be included in the divisor in the computation of estimated current return.

Item 2, No. 5:

Briefly indicate how estimated current return is calculated. State any qualifications related to this calculation, including the use of estimates and any circumstances that would subject the calculation to revision and provide per unit amounts of estimated total annual interest income and total annual expenses in the text. If the inclusion of when-issued securities or delayed delivery contracts in the trust will affect total annual interest income and/or current estimated return, briefly discuss those effects. If the impact of when-issued securities or delayed delivery contracts results in a lower estimated current return for initial investors than for later investors, use the lower amount in response to this item until all securities are in the portfolio, although the higher amount may be stated in a footnote. After all securities are delivered to the portfolio, the prospectus may be amended to show the higher amount.

Item 2, No. 6

In describing significant expenses, briefly identify the services provided, the persons providing the services, the basis on which payments are or will be made, and the amount of the expenses incurred annually, expressed as a percentage of net assets. A significant expense for purposes of this item includes any expense which represents more than 5% of total expenses. For a series which has not previously had an effective registration statement, the Registrant may provide an estimate of expenses.

If any person, other than the sponsor or trustee, such as a bank, broker-dealer, financial planner, or investment adviser, with the Registrant's knowledge, imposes any additional charges in connection with purchases, include a statement to that effect and a brief description of the charge.

Item 3. Portfolio Schedule

(a) Provide an audited schedule of investments, as of the date of the financial statements required by Item 4, in the tabular form indicated below:

Name of Issuer and Title of Security	Number of Shares or Aggregate Principal Amount	Date of Maturity	Redemption Value	Coupon Rate of Security	Security Rating

(b) Discuss, as applicable, in a footnote to the table, the value of each security exclusive of any feature that adds value to the security only while held by the trust and the reasons for the difference in value.

(c) If applicable, discuss the trust's policies with respect to the deposit of units of other trusts in the trust portfolio [See Rule 14a-3 17 CFR 270.14a-3].

(d) Briefly describe procedures for valuation of portfolio securities, including valuation of any insurance, guarantee, or other feature related to the portfolio securities.

(e) Discuss any insurance or guarantee of payments of principal or interest, or both, of the portfolio securities, including the scope of the insurance or guarantee and the name of the insurer or guarantor. If applicable, state that the financial statements required by Item 16(b) are available from the Registrant upon request at no charge to investors.

(f) List the percentage of securities purchased on a when-issued basis or by delayed delivery contract, as a note to the schedule of investments, until the delivery of such securities has occurred. Asterisk these securities in the portfolio schedule. Briefly discuss the nature of the securities and what the trust will do if the securities are not issued or delivery is delayed beyond the expected delivery date. Indicate when the value of trust assets will be "at risk" with respect to market price fluctuations. Discuss any adjustment of estimated current return as a result of purchasing these kinds of securities and the potential tax consequences to investors. If there are any provisions for offsetting the trustee's or sponsor's fee, so state, and briefly describe the tax consequences.

Instruction to Item 3(a):

(i) List as a separate line of the schedule of investments the units of each previously issued unit investment trust series deposited in the trust.

(ii) List in a note to the schedule the percentage of the aggregate market value of the trust of each type of security, e.g., industrial revenue bonds, electric utility bonds, general obligation bonds.

(iii) State in a note to the schedule whether the yield is current yield or yield to maturity.

(iv) If the trust's investment objective(s) or policies limit investment to securities with a minimum rating grade or of investment grade quality, provide a securities rating (or representation of the sponsor as indicated below) for each individual debt security, convertible debt security, or preferred stock held in the trust portfolio. Investment grade securities would include the four highest rating grades of a nationally recognized statistical rating organization, or securities with investment characteristics equivalent to the investment characteristics of such top rated securities. Provide the name of the rating organization whose rating is disclosed as a note to the schedule of investments. List in a note to the schedule the percentage of the aggregate market value of the trust of each rating grade of security. Provide a cross reference to the ratings information required by Item 9(d).

(v) In any prospectus used during the initial offering, provide the aggregate profit (or loss) of the sponsor with respect to the deposit of securities in the series.

(vi) List the percentage of portfolio securities deposited in the series in which the sponsor(s) was a manager, co-manager, or member of the syndicate underwriting the issuance of those securities, and identify them individually by asterisk in the first column of the portfolio schedule.

Item 4. Financial Statements

(a) (i) Initial Offering. Any prospectus used in the initial offering by any series shall contain an audited balance sheet or statement of assets and liabilities as of the end of the most recent fiscal year.

(ii) The prospectus of any series which has not previously had an effective Registration Statement under the Securities Act but has an operating history, shall also include the additional financial statements required by Item 4(b) below as of a date within 90 days prior to the date of filing.

(b) First Updated Prospectus. Any prospectus used by a Registrant twenty months or more after the date of the effective date of its initial offering, and until the balance sheet required below no longer meets the requirements of Section 10(a)(3) of the Securities Act, shall include:

(i) An audited balance sheet, conforming to the requirements of Regulation S-X, as of a date no less than twelve months and no more than eighteen months after the effective date of the initial offering or initiation of operations, whichever is later;

(ii) Audited statements of operations for the period from initiation of operations to the date of the audited balance sheet conforming to the requirements of Regulation S-X; and

(iii) Audited statements of changes in net assets for the period from initiation of operations to the date of the audited balance sheet conforming to the requirements of Regulation S-X.

(c) Subsequent Updated Prospectus. Any prospectus, used after the balance sheet required by Item 4(b)(i) no longer meets the requirements of Section 10(a)(3) of the Securities Act, shall contain an audited balance sheet, an audited statement of operations, and an audited statement of changes in net assets for the previous fiscal year conforming to the requirements of Regulation S-X unless during the most recent fiscal year of the series:

(i) The Registrant has filed an amendment to the Registration Statement and made part of the prospectus the following information:

(A) An unaudited statement of operations in conformance with Regulation S-X [17 CFR 210.6-07] for the previous calendar year;

(B) A statement as to the amount of interest received on the bonds or other debt securities held by the registrant and, in the case of a registrant that holds municipal securities, the percentage of such amount itemized by states and territories in which the issuers of such bonds are located;

(C) A schedule of bonds removed from the portfolio during the previous calendar year, the date sold, amounts received, par value, and date of distribution of proceeds; and

(D) A portfolio schedule in conformance with Item 3(a) of Form N-7 as of the end of the calendar year.

(ii) There has been no substitution of portfolio securities or securities added to the series by the trustee; and

(iii) The trustee's financial statements are audited annually by an independent public accountant, and the trustee receives an unqualified report on the internal accounting controls of its trust operations.

Instructions to Item 4(a)

If the schedule of investments included in response to Item 3(a) provides the information required as part of the audited balance sheet, it need not be duplicated in response to Item 4. Where the schedule of investments included in response to Item 3(a) is designated as part of the financial statements required by Item 4, provide a cross-reference to the auditor's report required by Item 4 in a headnote to the schedule of investments included in response to Item 3(a). This headnote should be deleted if the Registrant subsequently files information by post-effective amendment under Item 4(c).

Instructions to Item 4(b)

To the extent that the audited balance sheet required by Item 4(b)(i) is as of a date more than twelve months after the effective date of the series registration statement, the audited statement of operations and audited statement of changes in net assets required by Items 4(b)(ii) and (iii) may each be contained in one statement. If the balance sheet is as of a date longer than twelve months from the effective date of the series' registration statement, two statements of operations and two statements of changes in net assets must be filed because neither of these statements may cover a period greater than twelve months. Furnish a specimen price make-up sheet showing the computation of the total offering price and redemption or repurchase price per unit as a continuation of the balance sheet.

Instructions to Item 4(c)

The requirements of Item 4(c)(i) may be satisfied by attaching to the prospectus a report from the trustee containing the information specified in this item. If the portfolio schedule is filed as part of the trustee's report in response to Item 4(c), it need not be duplicated in Item 3. If the conditions of Item 4(c) are met, for the year after the audited financial statements required by Item 4(b) have been made part of the prospectus and every subsequent year, the registrant may delete the information contained in Items 3(a) and 4 and attach a current trustee's report containing the information specified in Item 4(c). If the trustee's report is included in lieu of the audited financial statement required by Item 4(c)(iii), note that the report on internal accounting controls must be made an exhibit to the registration statement under Item 13. Furnish a specimen price make-up showing the computation of the total offering price and redemption or repurchase price per unit as of the date of the schedule of investments, using as a basis the value of the Registrant's portfolio securities and other assets and the Registrant's outstanding securities.

Item 5. Risk Disclosure

(a) Discuss briefly any risk factors which are peculiar to this series of the Registrant (and therefore not discussed in Item 9(c) of Part I-g) including:

(i) the risks associated with investing in each particular security included in the trust series;

(ii) if applicable, the risks associated with being invested in 25% or more of any one issue;

(iii) any features of the trust series that could affect the liquidity of the series, including the liquidity of portfolio securities backed by letters of credit or subject to put agreements or buy back agreements; and

(iv) for series which hold fixed income securities in their portfolio, the effect of a rise in interest rates on the value of trust units.

(b) Briefly describe any material pending legal proceedings relating to or affecting the trust to which the Registrant, the trustee, the sponsor, or the principal underwriter of the Registrant is a party, other than ordinary routine litigation incidental to the business. Include the name of the court in which the proceedings are pending, the date instituted, and the principal parties thereto. Include similar information as to any administrative proceedings instituted by governmental authorities.

Item 6. Tax Status and Consequences

Describe briefly the tax status of the trust and the tax consequences to investors of an investment in the series being offered, including, to the extent applicable:

(a) the material features of the tax opinion of Registrant's counsel;

(b) if appropriate, a brief statement that Registrant intends to qualify for treatment under Subchapter M of the Internal Revenue Code;

(c) a brief description of the tax consequences resulting from the kinds of portfolio securities held by the series, e.g., municipal securities, when-issued securities, or discount bonds; and

(d) a statement that distributions to investors may be subject to state and local taxes and that investors should consult their attorney or accountant to determine the precise tax consequence of an investment in Registrant under the laws of the investor's jurisdiction.

Instruction to Item 6:

If the tax information applies to all series of a trust using the same Part I-g, it may be located in Part I-g. If the information contained in this item varies among series using the same Part I-g due to the types of portfolio securities held in different trust series, such information should be located in Part I-s of the prospectus. In any event, all tax status discussion should be in one place.

Item 7. Underwriters

(a) In the prospectus used for the initial offer of any units of the series, state for each principal underwriter distributing securities of the series:

(i) name and principal business address;

(ii) nature of any material relationship with the Registrant (other than that of principal underwriters;

(iii) amount of securities underwritten;

(iv) amount paid or to be paid; and

(v) the nature of the obligation to distribute Registrant's securities.

(b) Compare the price to the public with the price paid.

(c) State the amount of the discounts and commissions to be allowed or paid to underwriters or dealers, including all cash, securities, contracts or other consideration to be received by underwriters or dealers in connection with the sale of the securities.

Instructions to Item 7(a):

All that is required about the underwriter's obligation is whether the underwriters are or will be committed to take and to pay for all the securities if any are taken, or whether it is merely an agency or "best efforts" arrangement under which the underwriters are required to take and pay for only such securities as they may sell to the public. Conditions precedent to the underwriters' taking the securities, including "market outs," need not be described except in the case of an agency or "best efforts" arrangement.

Instructions to Item 7(b):

If it is impracticable to state the price to the public, explain the method by which it is to be determined. This explanation should include a brief description of the valuation procedure to be used by the Registrant in determining the price. In addition, if the securities are to be offered at the market price, or if the offering price is to be determined by a formula related to market price, indicate the market involved and the market price as of the latest practicable date. Other than the price itself, information stated elsewhere in Part I-s should not be repeated in response to Item 7. As to the offering price, the response should state how the excess of offering price over the net amount invested is distributed among the Registrant's principal underwriters or others.

Instructions to Item 7(c):

1. The term "commissions" has the meaning given in paragraph (17) of Schedule A of the Securities Act [15 U.S.C. 77aa].

2. Disclose all commissions paid by other persons, other consideration paid to underwriters or dealers, and any finder's fees or similar payments.

3. If any dealers will, in the capacity of underwriters, receive any additional discounts or commissions for acting in such capacity, state the additional amounts to be received.

(a) Describe briefly the plan of distribution of any securities which will be offered other than through an underwriter.

(b) If any of the securities being registered will be offered other than for cash, state briefly the general purpose of the distribution, the basis on which the securities will be offered, the amount of compensation and other expenses of distribution, and by whom such expenses are to be borne.

PART I-g - General Information about a Trust Required in a Prospectus

Item 8. Table of Contents

List the contents of Part I-g of the Prospectus.

Item 9. General Description of the Trust

(a) Concisely discuss the organization and operation or proposed operation of the Registrant. Include the following:

(i) basic identifying information, including the date and form of organization of the trust and the name of the state or other jurisdiction in which it is organized;

(ii) a concise description of the investment objectives of the trust;

(iii) a concise description of the trust's policies and procedures for acquiring and disposing of portfolio securities, including:

(A) the types and principal features of securities which may be included in a series;

(B) the basis on which securities may be selected for a particular series; and

(C) if the trust plans to concentrate in a particular industry or group of industries, identify the industry or industries. (Concentration, for purposes of this item, is deemed to be 25% or more of the value of Registrant's total assets invested or proposed to be invested in a particular industry or group of industries, i.e., hospital bonds, utility bonds. The policy on concentration should not be inconsistent with the trust's name.)

(b) Describe briefly the policy of the trust for acquiring additional securities and substituting or eliminating the underlying securities of the trust, including:

(i) the circumstances when additional securities would be acquired, or underlying securities eliminated or substituted;

(ii) the type of securities which may be substituted for underlying securities; and

(iii) the use of the proceeds from the sale of any security eliminated from a series.

(c) Briefly discuss the principal risk factors associated with investment in the trust, if not discussed in Item 5, including factors peculiar to the Registrant as well as those generally related to a unit investment trust with investment objectives similar to that of the trust.

(d) Where a rating of a portfolio security is referred to in response to Item 3(a) of Part I-s, provide each rating organization's definition or description of the category in which it rated the class of securities; the relative rank of each rating within the assigning rating organization's overall classification system; and a statement informing investors that a security rating is not a recommendation to buy, sell, or hold securities; that it may be subject to revision or withdrawal at any time, if such is the case, by the assigning rating organization; and that each rating should be evaluated independently of any other rating.

(e) Provide a brief description of:

(i) (A) the Registrant's policy with respect to dividends and distributions, including the nature and frequency of distributions, and

(B) any options unit holders may have as to the receipt or reinvestment of dividends and distributions, including reinvestment of dividends in the trust or other investment vehicles, and explain how to receive more information about these options;

(ii) any provisions for amending or terminating the trust;

(iii) the trust reports and account information that will be provided to unit holders, how information may otherwise be obtained and how unit holder inquiries may be made; and

(iv) the substance of any other material provisions of the trust indenture concerning the trust or its units.

Item 10. General Description of Trustee and Sponsor

(a) Briefly describe the trustee, including its name, address, date of organization, the name of the state or other jurisdiction under the laws of which it is organized, the general nature of its business, and its functions with respect to the Registrant. Include the information specified below:

(i) the nature of its duties under the trust indenture or agreement and any limitations on liability arising from those duties; and

(ii) the terms and conditions for the resignation of the trustee or for the removal of the trustee due to the failure to perform its duties, obligations or functions, including the appointment of a successor trustee and the procedure if a successor trustee is not appointed.

(b) Briefly describe each sponsor, including its name, address, date or organization, the name of the state or other jurisdiction in which it is organized, the general nature of its business, and its functions with respect to the Registrant, including:

(i) if the sponsor is controlled by another person, the name of that person and the general nature of its business. (If the sponsor is subject to more than one level of control, give the name of the ultimate control person and the nature of its business);

(ii) the nature of its duties under the trust indenture or agreement and any limitations on liability arising from those duties;

(iii) the terms and conditions for resignation of the sponsor or for removal due to the failure of the sponsor to perform its duties, obligations or functions, including the appointment of a successor sponsor and the procedure if a successor sponsor is not appointed;

(iv) state that the sponsor may realize a profit (or sustain a loss) during the initial offering period or secondary offering period as a result of daily fluctuations in the offering price of trust units; and

(v) if the sponsor may receive compensation (not already described) through the sale or purchase of units of the trust or of the portfolio securities, briefly describe the nature and extent of this compensation.

(c) If the trustee or sponsor may have the use and benefit of (i) investor's purchase monies received before settlement date; or (ii) interest and capital gains monies received by the trust before distribution to unit holders, so state.

(d) State the name of counsel furnishing the legal opinion on the securities issued by the trust and the city and state where located.

(e) State the name of the auditor(s) of the trust and the city and state where located.

Instruction to Item 10(b):

The description of the sponsor's business should be short and, if a general description is provided, need not list all of the businesses in which the sponsor engages or identify all the jurisdictions where it does business.

Item 11. Purchase of Securities Being Offered

Describe briefly how the securities being offered may be purchased. The description should emphasize the procedures to be followed and should minimize discussion of applicable legal requirements. Include:

(a) the name and principal business address of any principal underwriter for Registrant (If any affiliated person of Registrant is an affiliated person of the principal underwriter, so state and identify the person.);

(b) a concise explanation of the method followed or to be followed in determining the total public offering price, including:

(i) an explanation that the price is based on net asset value;

(ii) a statement as to when calculations of net asset value are made and that the price at which a purchase is made is based on the next calculation of net asset value after the order is placed;

(iii) the sales charge, if any, as a percentage of the public offering price and as a percentage of the net amount invested for each breakpoint, if applicable; and,

(iv) a brief explanation of how interest is accrued for crediting to a unit holder's account upon purchase, the policy for remitting accrued interest to unit holders, and the effect of the policy on the estimated current return.

(c) a brief explanation of the consequences to unit holders of purchasing and then, within a short period of time, redeeming or reselling units;

(d) unless set forth in response to paragraph (b) above, list any special purchase plans or methods established under a rule or any exemptive order that reflect scheduled variations in, or elimination of, the sales load (e.g., letters of intent, accumulation plans, dividend reinvestment plans, withdrawal plans, exchange privileges, employee benefit plans, redemption plans, or the terms of a merger, acquisition or exchange offer made pursuant to a plan of reorganization); identify each class of individuals or transactions to which the plans apply; state each different sales charge available as a percentage of the public offering price and as a percentage of the net amount invested; and state from whom additional information about these special purchase plans or methods may be obtained;

(e) any procedures relating to the issuance of certificates, e.g., how to obtain a certificate, and whether a request is necessary;

(f) any special purchase plans or procedures such as exchange privileges or services in connection with retirement plans not already discussed in paragraph (d);

(g) a list of any organizations providing services or of investment programs made available in conjunction with investment in the trust, and a brief description of their features or a statement from whom additional information may be obtained; and

(h) any minimum initial or subsequent investment.

Instructions to Item 11(b):

Explain the reasons for any difference in the price at which securities are offered generally to the public, as individuals and as groups, and to officers, directors or employees of the Registrant's sponsor or trustee.

Item 12. Redemption and Repurchase of Securities Being Offered

(a) Describe briefly all procedures for redeeming the Registrant's shares, any restrictions thereon, and any charges that may accompany redemption. If Registrant, under normal circumstances, intends to redeem in kind (see Rule 18f-1 [17 CFR 270.18f-1]), so state and briefly describe the conditions for exercising such a redemption.

(b) If the sponsor intends to make a secondary market in units of the trust, briefly state (1) under what conditions it would stop doing so and (2) that investors may redeem units if the sponsor should decide to discontinue maintaining a secondary market. Compare procedures and prices between repurchases by the sponsor of units in the secondary market and redemptions by the trust.

(c) Describe briefly any procedure whereby a unit holder can sell his units to the Registrant or its underwriter through a broker-dealer other than the sponsor and, if charges may be made for this service, so state. The specific fees for the service that may be charged by the broker-dealer selected by the shareholder need not be disclosed.

(d) If the Registrant is permitted to redeem units involuntarily in accounts below a certain number or value of units, describe briefly.

(e) Describe the method the Registrant will follow in determining the redemption price and the repurchase price. Describe the method or methods used to value the Registrant's assets. The response should identify the method used to value the assets, e.g., market value, good faith determination.

(f) If the Registrant may hold payment upon a request for redemption for a certain period after a unit holder's investment, describe briefly.

Instructions to Item 12(b):

Describe the valuation procedure used by the Registrant in determining net asset value and redemption or repurchase price.

PART II. OTHER INFORMATION

Item 13. Exhibits

List all exhibits filed as part of the Registration Statement:

1. copies of the resolution of the board of directors of the sponsor authorizing the establishment of the Registrant;

2. copies of the indenture or agreement under the terms of which the trust was organized or issued securities;

3. copies of all agreements for custody of securities and similar investments of the Registrant, including the schedule of remuneration;

4. copies of each underwriting or distribution contract between the Registrant and the principal underwriter, or between the sponsor and the principal underwriter, and specimens or copies of all agreements between principal underwriters and dealers;

5. copies of the certificate of incorporation or other instrument of organization and the by-laws of the sponsor;

6. copies of all other material contracts not made in the ordinary course of business which are to be performed in whole or in part on or after the date of filing the Registration Statement;

7. specimens or copies of each security issued by the series;

8. an opinion of counsel and consent to its use as to the legality of the securities being registered, indicating whether they will, when sold, be legally issued, fully paid, and non-assessable;

9. copies of any insurance or guarantee contracts relating to portfolio securities of the trust that were obtained by the trustee or sponsor;

10. any financial statements incorporated by reference under Item 16;

11. copies of any other opinions (including the tax opinion of Registrant's counsel), appraisals, or rulings, and consents to their use relied on in preparing this Registration Statement and required by Section 7 of the Securities Act;

12. consent of the evaluator if the evaluator is not the sponsor;

13. copies of any agreements or understandings made in consideration for providing the initial capital between or among the Registrant, the sponsor, underwriter, or initial unit holders, and copies of any written assurances from the sponsor or initial unit holders that the purchases were made for investment purposes without any present intention of redeeming; and

(14) the report of the trustee's independent public accountant on the trust's system of internal accounting controls required by Item 4(c) of Part I-s. The accountant's report shall be based on the review, study, and evaluation of the accounting system, internal accounting controls, and procedures for safeguarding securities made during the audit of the financial statements. The fact that an accountant's report is attached to this form shall not to be regarded as acknowledging any review of this form by the trustee's independent public accountant.

All series of a trust using the same trustee may incorporate by reference the accountant's report of internal control.

Instruction:

Subject to the rules on incorporation by reference, the foregoing exhibits shall be filed as a part of the Registration Statement. Exhibits numbered 4 and 7-12 above need be filed only as part of a Registration Statement under the Securities Act. Exhibits shall be lettered or numbered for convenient reference. Exhibits incorporated by reference may bear the designation given in a previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits.

Item 14. Directors and Officers of the Sponsor

Give the following information about each director or officer of the sponsor only if the sponsor is not currently registered with the Commission as a broker-dealer or investment adviser:

Name and Principal Business Address	Positions and Offices with Sponsor

Item 15. Indemnification

State the general effect of any contract, arrangement, or statute under which the trustee, sponsor, underwriter, or any affiliated person of the Registrant is insured or indemnified in any manner against any liability which may be incurred in such capacity, other than insurance provided by such persons for their own protection.

Instruction to Item 15:

In responding to this Item the Registrant should note the requirements of Rules 461 and 484 under the Securities Act [17 CFR 230.461, 230.484] and Section 17 of the 1940 Act [15 U.S.C. 80a-17].

Item 16. Third Party Financial Statements

(a) Include the Financial Statements described in Item 16(c) for each sponsor required to maintain a reserve pursuant to Section 27 [15 U.S.C. 80a-27] of the Investment Company Act of 1940 for securities registered by this Registration Statement; or sponsor which guarantees to purchase units of the trust from unit holders at a price which is higher than the redemption price of the units;

(b) If portfolio securities valued at 25% or more of the net assets of the series are insured or guaranteed, or subject to a put or buy-back agreement or letter of credit, include the Financial Statements described in Item 16(c) for each:

(i) Guarantor of payment of interest or principal, or both, of 10% or more of the value of portfolio securities of the series as of the date of deposit, if the guarantee is made with respect to the deposit or holding of those securities in the trust series;

(ii) Insurer of payment of interest or principal, or both, of 10% or more of the value of portfolio securities of the series as of the date of deposit, if the contract for insurance is made with respect to the deposit or holding of those securities in the trust series;

(iii) Party to a put agreement, buy-back agreement, or similar agreement with the trust, the trustee, or the sponsor with respect to 10% or more of the value of portfolio securities of the trust as of the date of deposit, if the agreement is made with respect to the deposit or holding of the securities in the trust series; and

(iv) Issuer of a letter of credit guaranteeing the payment of interest or principal, or both, of 10% or more of the value of portfolio securities of the trust, as of the date of deposit, or guaranteeing the performance of a guarantor related thereto, if the guarantee is made with respect to the deposit or holding of the securities in the trust series.

(c) (i) Include the financial statements as of the end of the most recent fiscal year of the persons listed above. Except as to periods specified in Regulation S-X, these financial statements shall be in accordance with such regulation or substantially equivalent thereto, or shall include an independent accountant's report which states that the accounting principles and practices of any such person are in accordance with generally accepted accounting principles; or

(ii) Incorporate by reference the financial statements as of the end of the most recent fiscal year which are included in the filings under the Securities Exchange Act of 1934 of such persons listed above.

Item 17. Location of Accounts and Records

Give the name and address of each person who maintains physical possession of each account, book, or other document required to be maintained by Section 31(a) of the 1940 Act [15 U.S.C. 80a-30(a)] and the rules thereunder [17 CFR 270. 31a-1 to 31a-3].

Item 18. Management Services

Summarize any contract not discussed in Part I of this form under which management-related services are provided to the Registrant, showing the parties to the contract and the total dollars paid and by whom, for the last three fiscal years.

Instructions to Item 18:

1. A contract for "management-related services" includes any agreement whereby another person agrees to keep, prepare, or file such accounts, books, records, or other documents as the Registrant may be required to keep under federal or state law, or to provide any similar services with respect to the daily administration of the Registrant, but does not include:

   (i) any agreement to act as custodian or transfer agent for the Registrant,

   (ii) bona fide contracts for outside legal or auditing services, or

   (iii) bona fide contracts for personal employment entered into in the ordinary course of business.

2. In summarizing a management-related service contract, include the name of the person providing the service; any direct or indirect relationships between such person and the Registrant, its sponsor, or its principal underwriter; the nature of the services provided; and the basis of the compensation paid for the last three fiscal years.

3. Information need not be given about any service for which total compensation of less than $5,000 was paid during each of the last three fiscal years.

Signatures

As required by the Securities Act of 1933, and the Investment Company Act of 1940, the Registrant, _____

(certifies that it meets all of the requirements for effectiveness of this Registration Statement under Rule 485(b)

under the Securities Act of 1933 and) has caused this Registration Statement to be signed on its behalf by the undersigned in the city of _____ and State of _____, on the _____ day of _____, 19___.

Alternative Form of Signature for Filings under Rule 487

The Registrant, _____, hereby identifies series (number(s) and type) of the trust for purposes of the representations required by Rule 487 and represents the following:

1. That the portfolio securities deposited in the series as to which this Registration Statement is being filed do not differ materially in type or quality from those deposited in such previous series;

2. That, except to the extent necessary to identify the specific portfolio securities deposited in, and to provide essential financial information for, the series with respect to which this Registration Statement is being filed, this Registration Statement does not contain disclosures that differ in any material respect from those contained in the Registration Statement(s) for such previous series as to which the effective date was determined by the Commission or the staff; and

3. That it has complied with Rule 460 under the Securities Act of 1933.

As required by (the Securities Act of 1933 and) the Investment Company Act of 1940, this Registration Statement has been signed by the following persons in the city of _____ and State of _____, on the _____ day of _____, 19___.

_____
Registrant:

_____
By:

_____
Signature and Title:

_____
Sponsor:

_____
By:

_____
Name of officer of sponsor:

_____
Title:

_____

Instruction:

If the registration statement is being filed only under the Securities Act or under both the Securities Act and the 1940 Act, it should be signed by both the Registrant and its sponsor. If the registration statement is being filed only under the 1940 Act, it should be signed only by the Registrant.

Appendix

Issuer of Periodic Payment Plans

A unit investment trust that issues periodic payment certificates must:

1. Complete all items of Part I-s, Part I-g, and Part II (except items 2, and 3) to the extent those disclosures are not already made in answer to (2), (3), and (4) below.

2. Provide the following information in the prospectus:

   (i) On the outside cover page of the prospectus, provide the name of the portfolio company and a statement that the prospectus is not valid unless preceded or accompanied by the prospectus of the portfolio company.

   (ii) State the name of the portfolio company and the name of its adviser.

   (iii) Describe purchase plans available to investors and compare these plans to an investment directly in the portfolio company.

   (iv) Describe the procedures for liquidation or withdrawal from the periodic payment plan. Discuss the rights of rescission and refund of a unit holder's account and payments, including a description of a unit holder's rights under section 27 of the Investment Company Act of 1940. Include in this discussion: time periods; notices and procedures and consequences of missed payments; and procedures for reinstatement.

   (v) Briefly discuss the rights of unit holders to instruct the Registrant on the voting of portfolio company securities underlying their interests in the trust, including the manner in which votes will be allocated.

   (vi) State the conditions and describe the procedures to be followed for a substitution of the underlying portfolio securities.

   (vii) Describe the kind and frequency of reports and information that will be made available to unit holders, including reports and information generated by the underlying portfolio company.

3. Provide a transcript of a hypothetical account in Part I-s in substantially the following form on the basis of the certificate calling for the smallest amount of payments. The schedule shall cover each certificate of the type currently being sold from the approximate date of the trust's organization to the date of completion of the plan. However, this transcript need not be provided if the trust has been in existence less than two years prior to the estimated effective date of this registration statement.

Transcript of a Hypothetical Periodic Payment Plan Account 1/

Column A	Column B		Column C			Column D		Column E	Column F
	Amount of Payment		Deductions from Payments on Principal			Balance of Payments on Principal Available for Investment in Trust Property			
Date of Payment	Monthly for First Eighteen Months & Annually Thereafter	Cumulative	Underwriting Commissions, Loading Fees & all Other Similar Charges	Insurance Premiums	Other Deductions 2/	Monthly for First Eighteen Months & Annually Thereafter	Cumulative	Total Deductions Upon Liquidations	Liquidating Value of Certificate

1/ (a) The transcript shall be carried to date of completion and shall assume there has been no lapse or cancellation, or if incomplete to the approximate date of the statement of condition filed herewith.
(b) Income of the account which is to be reinvested shall be included in an appropriate manner.

2/ Specify any material items.

(4) For each installment payment type of periodic payment plan certificate of the trust, furnish the following information with respect to sales load and other deductions from principal payments. ("Sales load" includes sales load of any underlying investment company security. Computation should be made on the basis of the certificate calling for the smallest amount of payments.)

	Aggregate Amount of Payments (Complete period)		Payments during							
			Six months		One year		Eighteen months		Two years	
	Amount	% of Amount of Payments	Amount	% of Amount of Payments	Amount	% of Amount of Payments	Amount	% of Amount of Payments	Amount	% of Amount of Payments
1. Amount of payments to be made on certificates ...		100%		100%		100%		100%		100%
2. Amount of sales load ...										
3. Fee of custodian or trustee.....										
4. Insurance premium.....										
5. Other deductions from payments*.....										
6. Total deductions (2 to 5)										
7. Net amont invested										
8. Reductions upon liquidation.....										

* Indicate the nature of such other deductions, as taxes, commissions, etc. If any such item amounts to more than 1% of the total amount of payments to be made, list separately.

Guidelines for Form N-7

This release contains Guidelines prepared by the Division of Investment Management for registration statements on Form N-7 for unit investment trusts other than separate accounts of insurance companies organized as unit investment trusts. The Guidelines are based on Commission releases and staff interpretations. Adherence to these Guidelines should speed the examination by the Division's staff of registration statements on Form N-7.

The Guidelines are not rules of the Commission and, except as noted, represent only the views of the staff of the Division, not the Commission. The Guidelines should be read in conjunction with the Investment Company Act Releases cited in them. The policies stated in the Guidelines may be changed if necessary. Unless the context indicates otherwise, the term "unit investment trust," "unit trust," or "trust" refers to the unit investment trust series on behalf of which the Securities Act registration statement is filed.

Table of Contents

Guide 1. Name of Registrant

The registrant's name, as set forth in Item 1, must be consistent with the provisions of Section 35 of the Investment Company Act of 1940 ("1940 Act"). Section 35(d) provides that a registered investment company may not use a name or title which may be deceptive or misleading. If the registrant's name suggests a certain type of investment objective, its name should be consistent with its stated investment objective.

If a trust has a name that implies that its distributions will be exempt from federal income taxation, substantially all of the trust's net assets should be invested in tax-exempt securities. The staff takes the position that a trust must have at least 95% of its net assets invested in tax-exempt securities in order to have substantially all of its net assets so invested.

If the registrant's name implies that it will invest primarily in a particular type of security, or in a certain industry or industries, the registrant should invest at least 80% of the value of its total assets in the indicated type of security or industry. Any substitution or addition of securities to the trust portfolio should be consistent with maintaining this percentage. 1/ Further, the registrant's name may not be so similar to the name of an existing investment company as to cause confusion. Finally, a registrant should refer to Guide 20 if its name reflects a characterization of the maturity of the trust's securities portfolio.

For guidance in responding to Item 1 the registrant should refer to Investment Company Act Release No. 5510 (October 8, 1968) which, among other things, concerns the proprietary rights of an investment company in its name.

Guide 2. Valuation of Securities Being Offered

Item 11 requires a registrant to identify in the prospectus the method used to value trust assets. In some circumstances, value can be determined fairly in more than one way. For securities traded on a national securities exchange, valuation normally should be based on market value when readily available. 2/ If a security was traded on the valuation date, the last reported sale price generally is used. In the case of securities listed on more than one national securities exchange, the last reported sale, on the date of valuation, on either a composite transactions reporting system or the exchange on which the security is principally traded should be used or, if there were no sales on that exchange on the valuation date, the last reported sale, up to the time of valuation on the other exchanges should be used.

If there was no sale on the valuation date but published closing bid and asked prices are available, the valuation should be within the range of these quoted prices. Some companies as a matter of general policy use the bid price, others use the mean of the bid and asked prices, and still others use a valuation within the range of bid and asked prices considered to best represent value in that circumstance; each of these policies is acceptable if consistently applied. Normally, the use of the asked price alone is not appropriate. Where, on the valuation date, only a bid price or an asked price is quoted or the spread between bid and asked prices is substantial, quotations for several days should be reviewed. If sales have been infrequent or there is a thin market in the security, or the size of the reported trades is not representative of the fund's holding (as in the case of certain debt securities), further consideration should be given as to whether "market quotations are readily available." If it is decided that they are not readily available, the alternative method of valuation prescribed by Section 2(a)(41), that is, "fair value," as determined in good faith by the trustee or its appointed person, should be used.

For debt or equity securities traded over-the-counter where closing prices are not readily available, quotations should be obtained from more than one broker-dealer, particularly if quotations are available only from broker-dealers not known to be established market-makers for that security. A registrant may adopt a policy of using a mean of the bid prices, or of the bid and asked prices, or of the prices of a representative selection of broker-dealers quoted on a particular security; or it may use a valuation within the range of bid and asked prices considered to best represent value in that circumstance. The staff will consider any of these policies appropriate if consistently applied. If the validity of the quotations for securities traded over-the-counter appears to be questionable, or if the number of quotations indicates that there is a thin market in the security, further consideration should be given to whether "market quotations are readily available." If it is decided that they are not readily available, the security should be valued at "fair value" as determined in good faith by the trustee or its appointed person.

To comply with Section 2(a)(41) of the Act and Rule 2a-4, the trustee or its appointed person must satisfy itself that all appropriate factors relevant to the value of securities for which market quotations are not readily available have been considered and determine the method of arriving at the fair value of each such security. No single standard for determining "fair value in good faith" can be established, since fair value depends upon the circumstances of each individual case. As a general principle, the current "fair value" of an issue of securities being valued would be the amount which the owner might reasonably expect to receive for the securities upon their current sale. 3/

1/ See Guide 14 - Concentration or Other Significant Holdings.

2/ Investment Company Act Release No. 7221 (June 9, 1972) [37 FR 12790 (June 24, 1972)]. Registrants often value their debt securities by reference to other securities which are considered comparable in rating, interest rate, due date, etc. (often called "matrix pricing") or rely on pricing services which use matrix pricing for valuation of these securities. Responsibility for using a proper pricing method rests with the registrant.

3/ See Investment Company Act Release No. 6295 (December 23, 1970) [35 FR 19986 (December 31, 1970)], for a general discussion of the factors to be considered in this determination.

Restricted securities are securities which cannot be sold to the public without an effective registration statement under the Securities Act. These securities generally do not have readily available market quotations. They must, therefore, be valued in good faith by the trustee or its appointed person. 4/ It would be improper for the trustee or its appointed person to value these securities at the market quotation for unrestricted securities of the same class without considering other relevant factors, although the market quotation may be a factor considered in structuring the final valuation. 5/ The existence of a shelf registration for the restricted securities may be properly considered as another factor in the determination of the value of such securities, but there may not be an automatic valuation at market price based on this factor alone. 6/

Guide 3. Restricted Securities

Up to 40% in face amount of the securities in any series of a unit investment trust may consist of restricted securities, if the series meets the three conditions described below. For any series which contains restricted securities, all securities in the portfolio must be valued by an independent evaluator at the time the securities are deposited in the trust and during the time the series continues to hold restricted securities. (See Guide 2.) For purposes of this guideline, the term "restricted securities" shall mean those securities that cannot be sold publicly by the trustee without registration under the Securities Act of 1933, as amended.

The first condition is that sales of any securities from the portfolio will not result in (i) restricted securities constituting more than 50% in face amount of the securities remaining in the series after the completion of the sale, and (ii) the series holding less than $250,000 in face amount of any obligation which is a restricted security or less than 1,000 shares of any preferred stock which is a restricted security.

The second condition is that the sponsor maintains a secondary market in the units of the series after the units are originally issued. Alternatively, if for any reason the sponsor discontinues its maintenance of a secondary market, the sponsor must purchase units of the series tendered for redemption at a price not less than the current redemption price for units of the series if (i) it would be necessary for the series to sell restricted securities to meet redemptions and (ii) it is not feasible to dispose of the restricted securities within the period during which tendering unit holders are required to be paid.

Under the third condition, any series containing restricted securities with a value equal to more than 10% of the face amount of the portfolio securities must be reasonably diversified. The sponsor must limit its deposit of the securities of any single issuer, or of any two or more affiliated issuers, to less than 10% of the value of that series.

If all three conditions are not met, the series may hold up to 10% of the face amount of the portfolio securities in restricted securities or other illiquid securities.

If restricted securities are to be included in the portfolio of a trust, the percentage of restricted securities in the portfolio must be disclosed in the prospectus. The policy of investing in restricted securities, and the risks related to the specific restricted securities, should be briefly discussed in response to Items 5 and 9. Registrant must also briefly discuss any other material impact the inclusion of restricted securities may have on the series.

The percentages set forth in this guideline will not apply in situations where the portfolio contains restricted securities for which the principal market is outside the United States. The maximum percentage in these cases must be determined on a case-by-case basis, taking into consideration, among other things, the liquidity of these restricted securities in their overseas markets. For purposes of Form N-7, securities which are actively traded and have a principal market outside the United States are not considered restricted securities.

Guide 4. Deposit of Contracts to Purchase Securities

The sponsors of a trust may deposit in the trust, in lieu of the securities listed in the portfolio, contracts to purchase those securities together with the amount of cash, cash equivalents and letters of credit issued by a commercial bank or banks required to purchase the securities. If letters of credit are to be deposited as stated above, the bank(s) issuing these letters of credit must be identified in Item 3 of the prospectus as filed under the final pricing amendment to the registration statement. If the name of the bank(s) is unknown at the time the pricing amendment is filed, the name(s) may be omitted, provided it appears in the prospectus filed with the Commission under Rule 424(b). Contracts to deliver securities may not exceed 120 days from the effective date of the registration statement of the series to the date of investment in the security named in the contract.

Guide 5. Advance by Trustee

If the trustee may make interest-free advances to the trust to pay periodic income distributions to unit holders of the trust and subsequently be reimbursed out of income received by the trust from distributions on securities in the trust's portfolio, Item 10 must briefly describe the circumstances under which the advance may be made.

4/ Investment Company Act Release No. 7221, supra.

5/ Investment Company Act Release No. 5847 (October 21, 1969) [35 FR 253 (December 31, 1970)].

6/ Investment Company Act Release No. 6121 (July 20, 1970).

Guide 6. Guarantors, Letters of Credit and Collateralized Securities

When portfolio securities are guaranteed, subject to a put agreement or letter of credit, and/or collateralized as to the payment of principal or interest in connection with the deposit or holding of the securities in the trust, provide a brief description of the following in Item 3.

1. guarantors:

   (i) name of guarantor;

   (ii) nature and scope of guarantee, including material limitations; and

   (iii) information about the guarantor's financial statements as required by Item 16;

2. put agreements, buy-back agreements:

   (i) name of party subject to put or buy-back agreement;

   (ii) substance of agreement or commitment including material limitations; and

   (iii) information about the party's financial statements as required by Item 16;

3. letters of credit:

   (i) name of party issuing letter of credit;

   (ii) a general description of the scope and terms of the letter of credit, including material limitations; and

   (iii) information about the issuer's financial statements as required by Item 16; and

4. collateralized securities:

   (i) a general description of collateral;

   (ii) scope and material terms of the agreement under which the securities are collateralized, including material limitations;

   (iii) custodial arrangements;

   (iv) procedures for valuation; and

   (v) conditions for increasing or adding collateral.

Guide 7. Insurance of Portfolio Securities

When portfolio securities are insured as to the payment of principal or interest in connection with the deposit or holding of securities in the trust, provide the following information in Item 3.

1. A discussion of the nature and scope of the insurance, including:

   (i) conditions of or limitations on coverage; 7/

   (ii) procedures for and manner of insurance payment;

   (iii) whether insurance is effective only while certain securities are held by the trust;

   (iv) effect of insurance on any rating assigned to the securities by any rating agency; and

   (v) information about insurer's financial statements as required by Item 16.

2. A brief description of the relation of insurance to the valuation of portfolio securities, including:

   (i) a statement, if applicable, that insurance does not guarantee market value of portfolio securities or of units of the trust; and

   (ii) the circumstances under which insurance would be considered in the valuation of portfolio securities, including valuation upon default or threat of default of payment by issuers of portfolio securities.

3. A statement that any payments made pursuant to the insurance policy, e.g., payments on default of tax-exempt securities, may have tax consequences to unitholders.

7/ The staff takes the position that any such insurance must be non-cancellable by the insurance company while held by the trust and the maximum insurance premiums must be fixed at the time of purchase for the life of the trust.

Guide 8. Special Redemption and Call Provisions

If any securities are subject to sinking fund, recall or special redemption by their issuers, provide the price and first possible date of recall or redemption in the designated column of the schedule of investments required by Item 3(a) or by footnote. If another date is more probable (e.g., first optional recall date), that other date may be used if the reason for using the other date is explained in a footnote. Disclosure can be omitted if the early call or redemption feature would not be material because the likelihood of call or redemption is remote. If 25% or more of the portfolio securities are subject to special or extraordinary redemption provisions, so state in response to Item 5. State, if applicable, that unit holders may suffer adverse income tax consequences and provide a brief description of the potential impact on estimated current return. If 25% or more of portfolio securities are subject to early call or redemption, care should also be taken by the registrant and sponsor that the potentially early call or redemption does not contradict the investment objective of the trust or result in its early termination.

Guide 9. Replacement of Failed Securities

Where the trust includes contracts for the purchase of securities that could fail or otherwise not be delivered, state the conditions under which the trustee is directed to acquire, and the procedures for acquiring, other securities in response to Item 9. The replacement securities must (i) meet the investment criteria established for the initial selection of securities, (ii) have a purchase price not exceeding the amount of funds reserved for the purchase of the failed securities, (iii) be purchased at a price that results in a yield to maturity and a current return at least equal to that of the failed securities as of the date of deposit, (iv) not be "when, as and if issued" securities or "delayed delivery" securities, and (v) be purchased within 20 days after delivery of the notice that the contract to deliver securities will not be honored. These conditions should be disclosed in response to Item 9. Disclosure also should be made of the fact that, if no replacement is made, the trust will refund to unit holders the principal amount and the sales charge attributable to the failed contracts. Briefly discuss the impact of a failed contract on current return, the income taxation of the investor, and provisions for payment of accrued interest.

Guide 10. Additions or Substitutions of Securities

Additional securities may be deposited in the trust subsequent to the initial date of deposit only if the securities substantially replicate the composition of the initial portfolio in terms of specific securities and maturities. Under Section 4(2) of the 1940 Act, a unit investment trust is defined as an investment company which, among other things, may issue securities, each of which represents an undivided interest in a unit of specified securities. The term "specified securities" requires that any additional securities deposited in the trust, pursuant to either a reinvestment of dividends or a subsequent offering of additional trust units, substantially replicate the initial composition of the trust portfolio both as to specific securities and actual maturities of that portfolio.

In some cases the trust indenture permits the sponsor to direct the trustee to dispose of portfolio securities and substitute new securities. The staff takes the position that Section 4(2) of the 1940 Act contemplates that the disposition of portfolio securities and the reinvestment of proceeds from such disposition in substitute securities would only occur under unusual circumstances, i.e., circumstances indicating that the credit worthiness or economic viability of the issuer of the portfolio security in question is seriously in doubt. A trust would not be not permitted to sell securities and reinvest proceeds in substitute securities solely because of the decline in value of a portfolio security due to general market or industry conditions. 8/ Where a condition occurs which permits a trust to dispose of portfolio securities and reinvest the proceeds in substitute securities, the new securities must meet the investment objectives established for the initial selection of securities in terms of type of security, yield to maturity, and quality. Registrant shall disclose in response to Item 9(b) the conditions for any substitution of securities and that, as required by Section 26(a)(4) of the 1940 Act, when a substitution of a portfolio security is made, notice will be sent to unit holders within five days after the substitution.

Guide 11. Securities Ratings

Securities ratings are required in the prospectus in the schedule of investments to the extent that the investment objective or policies of the trust specify a minimum grade or investment grade for portfolio securities held by the trust. Rule 436(g) under the Securities Act provides that the ratings assigned to a class of debt securities, a class of convertible debt securities, or a class of preferred stock by a nationally recognized statistical rating organization (including a rating made on the basis of insurance provided by a third party) may be included in a registration statement or prospectus without obtaining the consent of the rating organization as an expert for use of its rating. However, if a rating organization rates a trust as a whole, and not its individual securities, a consent of the rating agency is required to be filed with the registration statement pursuant to Section 7 of the Securities Act.

Where reference in the prospectus is made to a rating of the units of the trust, the following information should be included in response to Items 3 and 9(d): (1) any other rating intended for public dissemination assigned to such trust by a nationally recognized statistical rating organization that is available on the date of the initial filing of the document and that is materially different from any rating disclosed; (2) the

8/ See PaineWebber Equity Trust, Growth Stock Series, (pub. avail. September 24, 1986).

name of such rating organization whose rating is disclosed; (3) each such rating organization's definition or description of the category in which it rated the trust of securities; (4) the relative rank of each rating within the assigning rating organization's overall classification system; and (5) a statement informing investors that a security rating is not a recommendation to buy, sell or hold securities, that it may be subject to revision or withdrawal at any time by the assigning rating organization, and that each rating should be evaluated independently of any other rating of the same security by a different rating organization.

Where a securities rating of the trust or a portfolio security referred to in the prospectus materially changes and if that change could materially affect the rating of the entire portfolio, the registrant should disclose the rating change by means of a post-effective amendment or sticker to the prospectus. Disclosure of the rating change of a portfolio security may be omitted if the change would have no material impact on the rating of the entire portfolio.

Guide 12. Investment Objective and Policies

The registrant's investment objectives (including the types of securities in which it will invest) should be clearly and concisely stated in the prospectus.

The prospectus should emphasize the principal types of investments the registrant has made and the basic risks inherent in such investments. For example, if the registrant invests in other than high-grade bonds, 9/ it should concisely but clearly disclose in the prospectus the risks involved in such investments. Discussions of types of investments that will not constitute the registrant's principal portfolio emphasis should be as brief as possible and, if not more than 5 percent of the registrant's net assets are at risk, may be limited to identifying the particular type of investments. To achieve the objective of clear and concise disclosure, registrants should avoid extensive legal and technical detail and need not discuss every possible contingency, such as remote risks. 10/

The response to Item 9 should include a brief discussion of those trust indenture provisions relating to the investment objectives and portfolio securities of the registrant.

Guide 13. Allocation of Risk Disclosure

Items 5 and 9 require discussion of the principal risk factors associated with investment in the trust. In general, Item 5 requires a discussion of risk factors which are specific to the particular securities contained in a series of the trust. Item 9 requires a more general discussion regarding the risks associated with the the types of securities which may be included in a trust. Risk factors should be briefly discussed in response to Item 5:

(1) Where the risk is specific to the security, e.g., legal proceedings materially affecting a portfolio security;

(2) Where the risk relates to concentration in an industry or an issuer; or

(3) Where the risk relates to the credit-worthiness of the issuer of that security or to features peculiar to that security, e.g., a related buy-back or collaterization agreement.

Risk factors should be discussed in Item 9 where the risk pertains to the type of security which is or may be held by a series of the trust (e.g., housing bonds).

Guide 14. Concentration or Other Significant Holdings

Section 8(b)(1) of the 1940 Act requires every registered investment company to include in its registration statement a recital of its policies with respect to concentration. It is the position of the staff that investment (including holdings of debt securities) of more than 25 percent of the value of the registrant's total assets (applied on a series by series basis) in any one industry or group of industries represents concentration. If the registrant intends to concentrate in a particular industry or group of industries it should specify the industry or group of industries in which it intends to concentrate in response to Item 9.

If the registrant has not disclosed its intent to concentrate in a given industry, no further investment through substitution or addition of securities may be made in an industry if, upon making the investment, 25 percent or more of the value of the registrant's total assets would be invested in a particular industry. However, when securities of a given industry come to constitute more than 25 percent of the value of the registrant's total assets by reason of changes in value of either the concentrated securities or the other securities in the trust, the excess need not be sold.

When a substantial amount of the assets of a tax-exempt bond fund are invested in securities which are related in such a way that an economic, business, or political development or change affecting one such security would likewise affect the other securities, appropriate disclosure in the fund's prospectus in response to Item 5 is

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9/ High-grade bonds are bonds rated in the top three rating grades by a nationally recognized statistical rating organization.

10/ See individual subject headings of these Guidelines concerning disclosure for specific types of securities.

necessary. 11/ For example, each investment company investing in tax-exempt bonds should, if 25 percent or more of its total assets are or may be invested in securities whose issuers are located in the same state, indicate which states and the risks involved in investing in those particular states. In addition, if a company invests or may invest 25 percent or more of its assets in securities the interest upon which is paid from revenues of similar type projects, it should disclose this fact, identify the type or types of projects and briefly discuss any economic, business, or political developments or changes which would most likely affect all projects of that type. Such disclosure might include, for example, proposed federal or state legislation involving the financing of the projects; pending court decisions relating to the validity of the projects or the means of financing them; predicted or foreseeable shortages or price increases of materials needed for the projects; and declining markets or needs for the projects. Also, if a company invests 25 percent or more of its total assets in industrial development bonds, it should disclose this fact. 12/

NOTE: In determining industry classifications, registrants may use the current Directory of Companies Filing Annual Reports with the Securities and Exchange Commission, published by the Commission, or may select their own industry classification but such classification must be reasonable and should not be so broad that the primary economic characteristics of the companies in a single class are materially different.

Guide 15. Government Securities

If the registrant is investing in United States Government securities, the response to Item 9 should reflect the conditions and to what extent it does so. If the registrant invests to a significant extent in Government securities, the prospectus should include the following information: (i) the types of Government securities in which the trust invests; (ii) the principal Government agencies and instrumentalities in whose securities the trust invests; and (iii) whether the securities of such agency or instrumentality are: (a) supported by the full faith and credit of the United States, (b) supported by the ability to borrow from the Treasury, (c) supported by the credit of the agency or instrumentality, or (d) an explanation of how the securities are supported by the United States in some other way.

Guide 16. Original Issue Discount or Market Discount

If the trust holds original issue discount securities or market discount securities, list the amount of these securities in the trust portfolio as a percentage of the market value and principal amount of the securities of the trust and briefly describe the risks and possible tax consequences related to holding these securities in the trust. Provide this information in response to Items 5, 6, or 9, as appropriate. This disclosure may be omitted if the aggregate amount and percentage of discount securities is not material to the portfolio as a whole.

Guide 17. Deep Discount or Zero-Coupon Securities

If the trust holds deep discount or zero-coupon securities in its portfolio, provide the following information in response to Items 5 or 9:

1. a brief description of the securities;

2. a comparison with traditional securities;

3. if applicable, a statement that unit holders may realize either adverse or favorable tax consequences, to the extent these tax consequences are not discussed in Item 6;

4. risk disclosures specific to these kinds of securities including the risk of heightened price volatility (compared to other kinds of securities) related to changes in interest rates.

Guide 18. Mortgage Backed Securities

Discuss briefly the following aspects of mortgage-backed securities issued and/or guaranteed by a government agency held in the trust portfolio. This information should be briefly described in response to Items 5 or 9:

(i) nature of securities, including role and guarantee of any guarantor;

(ii) maturities and average life of securities;

(iii) likely conditions for and consequences of redemptions pursuant to prepayment of mortgages or other events; and

(iv) possible consequences to investors of discount or premium purchase of securities by the trust.

11/ Investment Company Act Rel. No. 9785 (May 31, 1977) [42 FR 29130, June 7, 1977]. Concentration under Section 8(b)(1) is not applicable to investments in tax-exempt securities issued by governments or political subdivisions of government because such issuers are not considered to be members of any industry. However, this exclusion does not eliminate the requirement for each tax-exempt bond trust to disclose its policy on concentration. Such a policy would apply to tax-exempt bonds issued by non-governmental entities as well as to other securities to which such policies normally apply.

12/ Id.

Guide 19. Municipal Lease Obligations

For trusts holding municipal lease obligations, provide a concise discussion of the following in response to Items 5 and 9:

1. description of the municipal lease obligations and collateral related thereto;

2. average range of maturities;

3. concentration disclosures, both as to similar types of revenue sources, e.g., municipal lease financing, and as to particular states or geographic regions;

4. description of standard provisions of these obligations;

5. risk disclosures specific to these kind of securities, including risks related to:

   (i) non-appropriation by municipality;

   (ii) credit risks of issuing municipalities;

   (iii) market value declines and their relation to fluctuations in interest rates;

   (iv) liquidity of the obligations, and possible effect on redemption values; and

   (v) risk of depreciation of the collateral;

6. description of any secondary market for these obligations, including a statement of whether the sponsor will maintain a secondary market in these obligations;

7. policy of trust with respect to possibility of failure of obligations, i.e., failure of party to deliver equipment pursuant to an obligation;

8. procedures for evaluation of these obligations; and

9. comparison of features and risks of investment in municipal lease obligations to investment in municipal bonds or notes of similar maturities.

Guide 20. Maturity of Trust Portfolio

If the trust has a name or investment objective that characterizes the maturity of its securities portfolio, the dollar-weighted average portfolio maturity of the trust must reflect that characterization. The staff takes the position that a short term series (or portfolio within a series) must have a dollar-weighted average portfolio maturity of not more than three years; a short/intermediate-term series (or portfolio within a series) must have a dollar-weighted average portfolio maturity of more than two years but less than five years; an intermediate-term series (or portfolio within a series) must have a dollar-weighted average portfolio maturity of more than three years but not more than ten years; an intermediate/long series (or portfolio within a series) must have a dollar-weighted average portfolio maturity of more than ten years but less than fifteen years; and a long-term series (or portfolio within a series) must have a dollar-weighted average portfolio maturity of more than ten years. Registrants should refer to Rule 2a-7 under the 1940 Act for determining the maturity of a portfolio security in the calculation of average portfolio maturity.

17 CFR Part 270

[IC-15611; S7-8-87]

Registration of an Indefinite Number of Securities by Unit Investment Trusts for Purposes of Secondary Market Sales

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and rule amendments.

SUMMARY: The Commission is publishing for comment a proposal under the Investment Company Act of 1940 to simplify the way unit investment trusts pay registration fees for securities sold in the secondary market and to consolidate the information required to be filed annually by each series of a unit investment trust. The proposal, if adopted, should result in lower costs and administrative burdens for the Commission and unit investment trusts.

DATE: Comments must be received by May 15, 1987.

ADDRESS: Three copies of all comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7-8-87. All comments will be available for public inspection in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Thomas S. Harman, Chief, or Jay Gould, Attorney, Office of Disclosure and Adviser Regulation, (202) 272-2107, Division of Investment Management, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing to revise the registration procedure for unit investment trusts ("UITs"), other than insurance company separate accounts organized as UITs and UITs which invest solely in one management investment company through the issuance of periodic payment plan certificates ("accumulation trusts"). The proposal would simplify filing requirements under section 24(f) of the Investment Company Act of 1940 [15 U.S.C. 80a-24(f)] ("1940 Act") by allowing a UIT series to register an indefinite number of securities solely for secondary market purposes and to pay no registration fee on secondary market sales. The UIT series would be permitted to use Rule 24f-3 provided that the registration fees under the Securities Act of 1933 are paid for the units of that series at or prior to the time of effectiveness of the registration statement. The proposal also would allow a UIT to partially or totally consolidate, into one notice and opinion of counsel, the filings now required to be filed separately by each series of a UIT.

Specifically, Rule 24f-3 would permit, under certain conditions, the sale of securities (also referred to as "units") of a UIT by the sponsor in the secondary market without imposing a registration fee under section 6(b) of the Securities Act of 1933 ("Securities Act").[1] Under Rule 24f-3, a UIT would (1) register a definite number of securities for purposes of its initial offering of each series and pay the registration fee required under section 6(b) for all securities to be issued at or prior to the time of effectiveness of the registration statement for that series, (2) make a Rule 24f-3 election to register all securities for resale in the secondary market either before or after its registration statement becomes effective and pay a $500 election fee, and (3) file a "Rule 24f-3 Notice" to complete the registration of trust units sold in the secondary market in the previous calendar year. The notice could be consolidated for all or multiple series of the trust having the same 1940 Act registration number.[2]

An amendment to Rule 24e-2 [17 CFR 270.24e-2] would prescribe requirements for UIT series which issue additional units under section 24(e). The amendment would require a UIT series (other than an accumulation trust or separate account organized as a UIT) to amend its registration statement to increase the amount of securities offered thereunder and pay the registration fee under section 6(b) of the Securities Act for the additional units at or before the time the amendment is effective, without reducing the amount of the aggregate offering price by the amount of repurchases or redemptions in the previous fiscal year. Because Rule 24f-3 would eliminate registration fees on trust units sold in the secondary market, the netting provision of Rule 24e-2 would no longer be needed for UITs. For the same reason, Rule 24f-2 [17 CFR 270.24f-2] would be amended to delete the reference to UITs (other than accumulation trusts and separate accounts organized as UITs).

[1] Section 6(b) [15 U.S.C. 77f(b)] provides "[a]t the time of filing a registration statement the applicant shall pay to the Commission a fee of one fiftieth of one per centum of the maximum aggregate price at which such securities are proposed to be offered, but in no case shall such fee be less than $100."

[2] Currently, a UIT registers under the 1940 Act on Form N-8B-2 [17 CFR 274.12] and registers its securities under the Securities Act on Form S-6 [17 CFR 239.16]. Each new series of a UIT receives a different Securities Act registration number but retains the same 1940 Act registration number. The Commission has proposed a new registration form for UITs, Form N-7, [Rel. Nos. 33-6580, IC-14513, May 14, 1985] which, if adopted, would integrate the registration requirements under the Securities Act and the 1940 Act and replace Forms N-8B-2 and S-6. Form N-7 has been reproposed for public comment. (*see* accompanying release, Rel. Nos. 33-6693; IC-15612 (March 9, 1987).

I. Background

A. General Operation of Securities Law Fee Provisions for Investment Companies

While section 6(b) of the Securities Act is the basic fee provision for issuers registering securities under the securities laws, section 24 of the 1940 Act also governs the registration fees paid under the Securities Act by UITs and other investment companies. To address the problem of oversales, which typically resulted because some types of investment companies continuously sell securities, section 24 was amended in 1970 [3] to permit the Commission to adopt rules providing for indefinite registration and retroactive registration of investment company securities. At the time of the 1970 amendment, to the 1940 Act, investment companies were required to register a definite number or amount of securities, and companies continuously selling shares occasionally would inadvertently oversell the definite number of shares they had registered. While as a practical matter investors who were given current prospectuses were not harmed, the oversales violated the registration provisions of the Securities Act and could have created rescission rights for purchasing shareholders. Rule 24f-1 [17 CFR 270.24f-1], adopted in 1971, permits limited retroactive registration for oversold securities upon payment of a fee three times the normal registration fee. In 1977, the Commission adopted Rule 24f-2 to provide a procedure for the registration of an indefinite amount of securities.[4]

1. Registration of an Indefinite Number of Investment Company Securities Under the Securities Act

Rule 24f-2 permits face-amount certificate companies, open-end management companies, and UITs ("eligible companies") to elect to register an indefinite number or amount of securities under the Securities Act. An eligible company which elects to use Rule 24f-2 must annually file a "Rule 24f-2 Notice" to make definite the number or amount of securities sold in the fiscal year for which the notice is filed. The company pays a fee for

[3] Pub. L. No. 91-547 [84 Stat. 1424 (1970)].

[4] Rel. Nos. IC-9989; 33-5881 (November 3, 1977) [42 FR 58400 (November 9, 1977)].

securities sold the previous year at the time it files the notice. If the company files the "Rule 24f-2 Notice" within two months after the end of the fiscal year, the company may, in calculating its registration fee under section 6(b), subtract the aggregate redemption or repurchase price of shares redeemed from the aggregate sales price of securities sold pursuant to Rule 24f-2.[5] This netting provision provides substantial savings for those investment companies that continuously sell new securities and redeem others, *e.g.*, mutual funds, effectively resulting in payment of fees on the amount of shares by which a fund "grows" each year.

A Rule 24f-2 filing must include an opinion of counsel with the "Rule 24f-2 Notice" indicating that the securities, at the time they were sold, were legally issued, fully paid, and nonassessable. A 24f-2 filing must also include a certified check for the fees due under paragraph (c) of Rule 24f-2, and may be accompanied by a cover letter (indicating the type of filing being made). A company electing to register securities under Rule 24f-2 must pay an election fee of $500.

2. Indefinite Registration of UIT Securities

Unlike most mutual funds, a UIT does not continuously offer securities for sale. Rather, each series of a UIT has an essentially fixed portfolio and capitalization.[6] Because of its fixed capitalization, UITs do not need to register an indefinite number of shares for the initial offering, instead they use Rule 24f-2 to register units resold by the sponsor in the secondary market. Such resales require registration because a sponsor is considered an "issuer."[7] A UIT, through its sponsor, typically will maintain a secondary market in which it repurchases units tendered by investors and resells those units with a sales charge to avoid having to sell portfolio securities comprising the trust series to meet redemptions.[8] An incentive to avoid redemptions exists because a large number of redemptions could necessitate liquidation of the trust series. Because a UIT series does not know when and how many units it must register in the secondary market, the indefinite registration provisions of Rule 24f-2 allow the sponsor to efficiently conduct its secondary market sales.

Because of the fixed nature of a UIT[9] and the netting provision of Rule 24f-2, the only fees due on a "Rule 24f-2 Notice" for a UIT after it pays its initial registration fee at the end of its first year generally result from imbalances in its secondary market activity, *i.e.*, the excess of units sold in one year over inventory accumulated in a previous year. The Rule 24f-2 fees filed for most of these series after the first year are less than one hundred dollars, and many of them require no fee at all. Each series of a UIT must, however, file a "Rule 24f-2 Notice," an opinion of counsel, and a certified check if a fee is due.[10]

II. Proposed Commission Action

A. Proposed Rule 24f-3

Proposed Rule 24f-3 would, if adopted, continue to permit UITs, other than accumulation trusts and separate accounts of insurance companies organized as UITs, to register an indefinite number of units, but only for the sale of units in the secondary market.[11] Because a UIT series is comprised of an essentially fixed portfolio with a fixed capitalization, the registration fee under Section 6(b) can be calculated at or prior to the initial offering. Although UIT securities sold in the secondary market must be registered,[12] the Commission believes that, to reduce administrative burdens on registrants and the Commission, it may be appropriate to eliminate any fee paid on a unit sold in the secondary market, so long as a fee was paid on the unit when initially sold. Because the number of units in a UIT series would not increase (unless additional units are added to the series under Rule 24e-2), this result would be consistent with the offsetting fee provision of Rule 24f-2. Rule 24f-3 would eliminate secondary market registration fees provided the UIT series paid the section 6(b) fee for the initial offering no later than when the registration statement for units of the series becomes effective and the number of units has not increased except as permitted by Rule 24e-2. While this approach would substantially simplify filing requirements, it should not adversely impact government revenues because fees for units sold will be substantially the same as those paid currently, and will in fact be paid earlier—at the time of initial offering rather than at the time the first "Rule 24f-2 Notice" is filed for that series.[13]

The provisions of Rule 24f-3 are patterned after Rule 24f-2. To use Rule 24f-3, a UIT would either make a Rule 24f-3 declaration before becoming effective on the facing sheet of its registration statement or, after becoming effective, by post-effective amendment. The UIT would then, within two months after the end of the calendar year,[14] file a single "Rule 24f-3 Notice," which would include sales information for the calendar year. This information could be consolidated for all series of the trust having the same 1940 Act registration number. The "Rule 24f-3 Notice" would include information regarding the number of sales made pursuant to Rule

[5] If the Rule 24f-2 Notice is filed after two months of the end of the fiscal year, the company may not take advantage of the netting provision but must pay for every share sold as specified in Section 6(b) of the Securities Act. [17 CFR 270.24f-2(c)].

[6] Each series of a trust is created by a separate trust indenture which, among other things, recites the exchange of a fixed portfolio of securities assembled by the sponsor for a specific number of units issued by the trustee representing the entire ownership of the series. The sponsor usually sells out the initial units within a few days.

[7] Section 2(4) [15 U.S.C. 77b(4)] of the Securities Act defines, in pertinent part, the "issuer" of a unit investment trust as the person performing or assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the securities are issued. Because the sponsor typically is the depositor, when it resells trust units in the secondary market the resales must be registered and made pursuant to a statutory prospectus meeting the requirements of Section 10(a) [15 U.S.C. 77j(a)] of the Securities Act.

[8] Because a UIT, by definition, issues redeemable securities, it must either redeem units tendered to it or make a secondary market in them. The number of units outstanding in each series generally declines after several years as investors resell their units to the sponsor and the sponsor, in turn, redeems these units when its inventory becomes too large. When tendering units for redemption, the sponsor directs the trustee to sell a corresponding amount of the portfolio securities of the series.

[9] See Municipal Investment Trust Fund (pub. avail. April 27, 1986).

[10] On filings made in paper, a single check may be filed for up to ten series. For electronic filings submitted on magnetic tape, a single check or wire transfer payment may be submitted for all notices on a single tape.

[11] Although many insurance company separate accounts are organized as UITs, they more closely resemble management investment companies in certain respects. For example, no secondary market exists for these securities. Because of the unique nature of these investment vehicles, the Commission believes that Rule 24f-2 better serves the purpose of the separate accounts of insurance companies and they would, therefore, continue to be "eligible companies" under Rule 24f-2.

[12] Nothing in Rule 24f-3 would affect the registration or prospectus delivery requirements for sales of units in the secondary market.

[13] Under Rule 24f-2, fees for initial units need not be paid until after the end of a series' first fiscal year, and the series may take advantage of the netting provision if the "Rule 24f-2 Notice" is filed within two months of the end of the fiscal year.

[14] Rule 24f-3 would require the notice to be filed as of the calendar year end as opposed to fiscal year end as required by Rule 24f-2. In this regard it should be noted that even though series of a UIT may have different fiscal year ends, UITs presently report information in Form N-SAR [17 CFR 274.101] on a calendar year basis. Filing Rule 24f-3 Notices on a calendar year basis should not be overly burdensome in view of the overall reduction in administrative burdens to UIT sponsors.

24f–3, any sales made other than under Rule 24f–3, and the fiscal year end for each series (*See* Attachment A), but would not include information regarding repurchases. Each "Rule 24f–3 Notice" would be accompanied by a cover letter explaining the filing and an opinion of counsel as to whether the units when sold were legally issued, fully paid, and non-assessable. Like the "Rule 24f–3 Notice," the cover letter could apply to all series of a trust which have the same 1940 Act registration number. One opinion of counsel could be filed for all the series covered by a notice.

A UIT which makes a Rule 24f–3 election [15] but fails to file its "Rule 24f–3 Notice" within two months after the end of the calendar year will be deemed, under paragraph (b)(3), to have terminated its Rule 24f–3 election on the next business day. That UIT would then have to file, as soon as possible, the "Rule 24f–3 Notice" for the calendar year which should have been filed by the last day of February and a second "Rule 24f–3 Notice" making definite the registration of those securities sold during the two month period of the subsequent calendar year when the Rule 24f–3 declaration was still in effect.

Although securities sold after the termination of the Rule 24f–3 declaration would be deemed to have been sold in excess of the securities included in the registration statement, Rule 24f–1 would offer limited relief to registrants who continue to sell securities after termination of the Rule 24f–3 declaration. Rule 24f–1 permits a UIT to retroactively register securities sold within six months before the filing of a "Rule 24f–1 Notification," although a fee three times the normal fee under section 6(b) would be required to be paid on those securities.[16] Those securities sold after the termination of the Rule 24f–3 declaration and not within the six month period covered by Rule 24f–1 would not be retroactively registrable and would, thus, have been sold in violation of the registration provisions of the Securities Act.[17]

In summary, Rule 24f–3 would eliminate the registration fee on units of a trust series sold in the secondary market if the UIT series initially registered all its units as a definite amount of securities, paid its section 6(b) registration fee on or before the effective date of the registration statement of each series, and the number of units has not increased. To complete the registration of series units sold in the secondary market, UITs may file, annually, one "Rule 24f–3 Notice" and one opinion of counsel for all series of a trust.

B. Transition to Rule 24f–3 for Previously Effective UITs

Paragraph (d) of proposed Rule 24f–3 contains a transition provision for UIT series that have elected to register an indefinite number or amount of securities pursuant to Rule 24f–2. UIT series which have made a Rule 24f–2 election will have paid the $500 election fee under that rule and would not be required to pay the $500 election fee required under paragraph (a)(4) of Rule 24f–3. A trust series that is effective, has made a Rule 24f–2 election, and has previously filed a "Rule 24f–2 Notice" would be deemed to have made an election under Rule 24f–3. Because such a series has already paid its registration fees when filing a "Rule 24f–2 Notice," no further registration fee would be owed by this series when it files its "Rule 24f–3 Notice." A UIT series that has elected to register an indefinite number of shares under Rule 24f–2 but has not filed its initial "Rule 24f–2 Notice," which would include registration fees for the initial offering, would be required to pay a registration fee calculated under section 6(b) with its "Rule 24f–3 Notice" for all units sold in the primary market.

C. Conforming Amendments to Rules 24e–2 and 24f–2

The Commission is also proposing companion amendments to Rules 24e–2 and 24f–2. Rule 24e–2 would be amended by adding a new paragraph (a)(1), to require a UIT (other than an accumulation trust or an insurance company separate account organized as a UIT) which amends its registration statement to increase the number of units to be offered pursuant to a registration statement to calculate its fee under section 6(b) without reducing the fee by the amount of redemptions or repurchases of securities being registered in the previous fiscal year.[18] If proposed Rule 24f–3 is adopted, this netting provision would no longer be necessary or appropriate for UITs.

Rule 24f–2 would be amended to delete the reference to UITs (except for an accumulation trust or an insurance company separate account organized as a UIT) so that it would no longer be available to UITs.

D. Cost/Benefit of Proposed Rule 24f–3

Rule 24f–3 would simplify the secondary market reporting requirements for UITs. Sponsors would be allowed to report the required information for all series with the same 1940 Act registration number by filing one "Rule 24f–3 Notice" and one opinion of counsel. Because Rule 24f–3 would require only sales information, there would be no need for sponsors to report repurchases, calculate net sales, or determine a filing fee. These aspects of Rule 24f–3 would significantly reduce the administrative expense of these annual filings for UIT sponsors.

The Commission would also experience some reduction in administrative burdens. The staff presently examines each "Rule 24f–2 Notice" and makes a calculation to verify that the correct fee has been paid. Because Rule 24f–3 would not require variable fees to be paid with the notices, staff procedures to verify fees would be eliminated.

E. Request for Comments

The Commission requests comment on its assessment of the costs and benefits associated with the proposal, including specific estimates of costs and benefits to sponsors and underwriters of UITs, issuers of the debt instruments that generally comprise the portfolios of UITs, and the investors who purchase units of UITs in both the initial and secondary market.

F. Summary of Initial Regulatory Flexibility Act Analysis

The Commission has prepared an Initial Regulatory Flexibility Act

[15] A UIT would not have to use Rule 24f–3. It could handle secondary market sales by registering more than the number of shares represented by the trust series, by amending its registration statement under Rule 24e–2 to increase the number of shares sold, or by retroactively registering shares under Rule 24f–1.

[16] For example, if a UIT which has previously made an election pursuant to Rule 24f–3 does not file its "Rule 24f–3 Notice" by February 29, 1988, the declaration under Rule 24f–3 would terminate on March 1, 1988. If the UIT files a Rule 24f–1 Notice and pays the appropriate fee pursuant to that rule by August 30, 1988 and, in addition, files separate Notices pursuant to Rule 24f–3 for securities sold during 1987 and securities sold during January and February of 1988, all securities would be registered. However, if the same UIT does not file its Rule 24f–3 Notice by February 29, 1988, and does not file under Rule 24f–1 until December 31, 1988 (and at that time files separate Notices pursuant to Rule 24f–3), only the securities sold between July 1 and December 31, 1988 would be registered. Securities sold between March 1 and June 30, 1988 would not be registrable pursuant to Rules 24f–1 or 24f–3. The UIT would be required to offer rescission to the purchasers of these securities.

[17] The same result currently occurs under Rule 24f–2 when a UIT allows its Rule 24f–2 declaration to lapse, continues to sell, and, does not cure the violation within six months by filing a notice under Rule 24f–1.

[18] The netting provision would not be disturbed for open-end, management investment companies, insurance company separate accounts organized as UITs, and UITs which invest solely in one management investment company through the issuance of periodic payment plan certificates.

Analysis in accordance with 5 U.S.C. 603 regarding proposed Rule 24f-3. The Analysis considers the impact of allowing small UITs to consolidate into one annual filing, registration information and the opinions of counsel for all series of a UIT into one "Rule 24f-3 Notice." The Analysis also discusses other alternatives to Rule 24f-3 considered specifically for small entities. A copy of the Initial Regulatory Flexibility Act Analysis may be obtained by contacting Jay B. Gould, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 5-2, Washington, DC 20549.

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 270 is amended by adding the following citation. (The citations that appear before the stars indicate general rulemaking authority).

Authority: Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80a-37, 80c-89; The Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 *et seq.* unless otherwise noted.

* * * * *

Authority: Sections 270.24e-2, 270.24f-2 and 270.24f-3 also issued under sec. 24, 54 Stat. 825, 84 Stat. 1424, 15 U.S.C. 80a-24; (sec. 6(c) of the Investment Company Act of 1940) (15 U.S.C. 80a-6(c))

PART 270—[AMENDED]

2. By adding § 270.24f-3 to read as follows:

§ 270.24f-3 Registration Under the Securities Act of 1933 of an indefinite number of securities by unit investment trusts other than insurance company separate accounts and periodic payment plans.

(a) *Election.* (1) A unit investment trust series may, subject to the provisions of this section, elect to register an indefinite number of securities under the Securities Act of 1933 by including on the facing sheet of its 1933 Act registration statement a declaration that an indefinite number of securities is being registered solely for sale by the issuer in the secondary market. If a registration statement under the Securities Act of 1933 is in effect as to such securities, the facing sheet of the registration statement may be amended to declare that, in addition to the definite number of securities presently registered, an indefinite number of securities is registered solely for sale by the issuer in the secondary market. The declaration shall take effect, when the registration statement or post-effective amendment in which it is included becomes effective.

(2) The issuer shall place on the facing sheet of any post-effective amendment to the registration statement filed after the issuer has made a declaration pursuant to paragraph (a)(1) of this section a statement to the effect that the issuer has registered an indefinite number of securities under the Securities Act of 1933 under this section solely for sale by the issuer in the secondary market, and the date on which the "Rule 24f-3 Notice" for the issuer's most recent calendar year was filed or will be filed, or a statement that pursuant to paragraph (b)(3) of this section the issuer need not file a "Rule 24f-3 Notice" because it did not sell any securities pursuant to the declaration during the most recent calendar year.

(3) A declaration filed pursuant to paragraph (a)(1) of this section, once effective, shall remain in effect as to the registration statement until expressly terminated by a statement on the facing sheet of a post-effective amendment thereto, or until involuntarily terminated as provided in paragraph (c)(1) of this section.

(4) At the time a declaration is filed there shall be paid to the Commission a non-refundable fee of $500.00. Payment of a fee to the Commission under this rule shall be by United States postal money order, certified bank check, or cash.

(5) A registrant may use this rule to register an indefinite number of securities for sale by the issuer in the secondary market only if at the time any units are initially offered for sale, a registration statement registers a definite number or amount of securities for all such units for which there shall be paid to the Commission a registration fee calculated in the manner specified in section 6(b) of the Securities Act of 1933 and the rules thereunder on or before the date on which the registration statement is declared or becomes effective.

(b) *Rule 24f-3 Notice.* An issuer which has filed a registration statement or post-effective amendment with a declaration authorized by paragraph (a)(1) of this section:

(1) Shall file within two months after December 31 of any year during which the declaration was in effect, five copies of a notice ("Rule 24f-3 Notice"), at least one of which shall be manually signed, containing the following information:

(i) The registration number and the name of the trust registered under the Investment Company Act of 1940;

(ii) The registration number and name of each series registered under the Securities Act of 1933;

(iii) The number of units resold for each series during the previous calendar year in reliance upon registration under Rule 24f-3;

(iv) The number of units sold during the previous calendar year other than pursuant to Rule 24f-3; and

(v) The fiscal year end for each series.

All series of a trust which are registered by the same registration number under the Investment Company Act of 1940 may be filed in the same "Rule 24f-3 Notice." The notice may be filed by a single letter captioned "Rule 24f-3 Notice (*name of registrant*)."

(2) The Rule 24f-3 Notice shall be accompanied by an opinion of counsel indicating whether the securities, sold pursuant to Rule 24f-3 and referred to in the "Rule 24f-3 Notice," makes definite in number, were legally issued, fully paid, and non-assessable. The opinion of counsel may cover all the series of a trust which are registered by the same registration number under the Investment Company Act of 1940.

(3) Nothing in paragraph (b) of this section shall require an issuer to include in a "Rule 24f-3 Notice" information on any series which during the previous calendar year has not sold any securities in reliance on a declaration authorized by paragraph (a)(1) of this section.

(c) *Termination of election.* (1) If the "Rule 24f-3 Notice" is not filed within the time specified in paragraph (b)(1) of this section, the declaration filed under paragraph (a)(1) of this section shall terminate on the next business day, and the registrant shall discontinue all sales of securities under such declaration. Securities sold after termination of the declaration shall, for purposes of Rule 24f-1 [17 CFR 270.24f-1], be deemed to have been sold in an amount in excess of the number of securities included in a registration statement of such issuer under the Securities Act of 1933 in effect at the time of the sale. A "Rule 24f-3 Notice" of this section shall be filed as soon as practicable after the termination with respect to sales of securities made pursuant to the declaration during (i) the calendar year as to which a "Rule 24f-3 Notice" was not timely filed and (ii) the period after the end of that calendar year but before the declaration was terminated.

(2) If a registrant has in effect a declaration described in paragraph (a)(1) of this section and the registrant proposes to cease operations, the registrant shall file a post-effective amendment terminating the declaration and shall file the "Rule 24f-3 Notice" prior to cessation of operations.

(d) *Transition rules.* (1) A unit investment trust series which, on the effective date of this rule, has registered

an indefinite number or amount of securities under Rule 24f–2 with respect to any of those securities and has not filed a "Rule 24f–2 Notice" shall be deemed to have made a declaration under paragraph (a)(1) of this section and to have paid the fee set forth under paragraph (a)(4) of this section. The trust series will be subject to all provisions of this rule except that it shall pay, within two months after the close of the first calendar year during which its Rule 24f–3 declaration was in effect, a registration fee calculated in the manner specified in Section 6(b) of the Securities Act of 1933 and the rules thereunder for all securities outstanding at the close of that fiscal year.

(2) A unit investment trust series that has registered an indefinite number or amount of securities under Rule 24f–2 and has filed a "Rule 24f–2 Notice" with respect to any of these securities shall, on the effective date of this rule, be deemed to have made a declaration under paragraph (a)(1) of this section and to have paid the fee set forth under paragraphs (a)(4) and (a)(5) of this section. The trust series shall file a "Rule 24f–3 Notice" under paragraph (b)(1) of this section and declare that the "Rule 24f–3 Notice" is filed under paragraph (b)(1) and will then be subject to all provisions of this rule. All subsequent filings made by a trust series under this rule shall be called a "Rule 24f–3 Notice."

2. By revising the introductory text, paragraph (a) and paragraph (b) introductory text, of § 270.24e–2 to read as follows:

§ 270.24e–2 Computation of fee.

Where a registration statement under the Securities Act of 1933 relating to the securities of an open-end management company or unit investment trust issuing redeemable securities is amended pursuant to section 24(e)(1) so as to increase the amount of securities proposed to be offered thereby,

(a) The fee to be paid at the time of filing the amendment:

(1) For unit investment trusts other than the separate accounts of insurance companies and unit investment trusts which invest solely in one management investment company through the issuance of periodic payment plan certificates shall be calculated in the manner specified in section 6(b) of the Securities Act of 1933,

(2) For open-end management companies and separate accounts of insurance companies organized as unit investment trusts and unit investment trusts which invest solely in one management investment company through the issuance of periodic payment plan certificates shall be calculated in the manner specified in section 6(b) of the Securities Act of 1933 except that, for the purpose of the calculation, the maximum aggregate price at which the securities are proposed to be offered may be deemed to be the maximum aggregate offering price, as determined by Rule 457(c) [17 CFR 230.457(c)] under the Securities Act of 1933, of: (i) the amount of securities (number of shares or other units) being registered reduced by (ii) the amount of securities (number of shares or other units) of the same class redeemed or repurchased by the issuer in its previous fiscal year (which amount of securities must, for purposes of this paragraph (a)(2)(ii), be reduced by the amount of any securities used in a reduction made by the issuer with respect to such shares pursuant to paragraph (c) of § 270.24f–2 during the current fiscal year) provided that, when more than one amendment is filed by an issuer in any one fiscal year, the total amount of securities used for the reductions during any fiscal year in which the reductions are. made may not exceed the total amount of securities which were redeemed or repurchased by the issuer during its previous fiscal year,

(3) Shall in no case be less than $100, and

(b) A registrant electing to calculate a filing fee described in paragraph (a)(2) of this section shall indicate,

* * * * *

§ 270.24f–2 [Amended]

3. Section 270.24f–2 paragraph (a)(1) is amended in the first phrase, after the words "open-end management company or" by adding the words "a unit investment which invests solely in one management investment company through the issuance of periodic payment plan certificates or a separate account of an insurance company organized as a".

By the Commission.

Jonathan G. Katz,

Secretary.

March 9, 1987.

Note.—Attachment A will not be printed in the Code of Federal Regulations.

BILLING CODE 8010-01-M

Attachment A

MODEL "RULE 24f-3 NOTICE"

THE MUNICIPAL TAX-FREE UNIT INVESTMENT TRUST

(811-0000)

1983 Act No.	SERIES NAME	NUMBER OF UNITS SOLD IN 1986 PURSUANT TO RULE 24f-3	UNITS SOLD IN 1986 OTHER THAN PURSUANT TO RULE 24f-3	FISCAL YEAR-END FOR EACH SERIES
33 -				
33 -				

[FR Doc. 87-5599 Filed 3-16-87; 8:45 am]
BILLING CODE 8010-01-C

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 192

Exportation of Used Self-Propelled Vehicles

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations by adding a new part concerning the exportation of used self-propelled vehicles. It sets forth the requirements for lawful exportation of such vehicles as well as the penalties and liabilities for attempted unlawful exportation. These regulations are necessary to implement certain provisions of the Motor Vehicle Theft Law Enforcement Act of 1984 and the Trade and Tariff Act of 1984 dealing with the unlawful exportation of used self-propelled vehicles.

DATE: Comments must be received on or before May 18, 1987.

ADDRESS: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations Control Branch, Room 2426, U.S. Customs Service Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229. Comments relating to the information collection aspects of the proposal should be addressed to Customs, as noted above, and also to the Office of Information and Regulatory Affairs, Attention: Desk Officer for U.S. Customs Service, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Legal Aspects: Harriett D. Blank, 202–566–5746 or Operational Aspects: Louis Razzino, 202–566–2140.

SUPPLEMENTARY INFORMATION:

Background

The Motor Vehicle Theft Law Enforcement Act of 1984 (Pub. L. 98–547) amended the Tariff Act of 1930, as amended (19 U.S.C. 1202 *et seq.*), by adding a new section 627 (19 U.S.C. 1627), relating to the unlawful importation or exportation of certain vehicles and equipment. Subsequently, the Tariff Act of 1930 was further amended by section 205 of the Trade and Tariff Act of 1984 (Pub. L. 98–573), which also added a new section 627 similar to section 627 of Pub. L. 98–547. The amendments made by Pub. L. 98–573 are set forth as 19 U.S.C. 1627a.

The new sections provide for civil penalties of not more than $10,000 for each violation, for knowingly importing, exporting, or attempting to import or export (1) any stolen self-propelled vehicle, vessel, aircraft or part of a self-propelled vehicle, vessel, or aircraft; or (2) any self-propelled vehicle or part of a self-propelled vehicle from which the vehicle identification number (VIN) has been removed, obliterated, tampered with, or altered. Also, any violation of 19 U.S.C. 1627 or 1627a subjects the vehicle, vessel, aircraft, or part thereof to seizure and forfeiture. In addition, any person attempting to export a used self-propelled vehicle must present both the vehicle and a document describing the vehicle, which includes the VIN, to Customs before lading if the vehicle is to be transported by vessel or aircraft, or before exportation if the vehicle is to be transported by rail, highway, or under its own power. Failure to comply with this provision subjects the violator to a civil penalty of $500 for each violation.

Pub. L. 98–547 and Pub. L. 98–573 were enacted in response to the ever-increasing incidents of the theft of motor vehicles and other conveyances and their exportation from the U.S. It is estimated that approximately 200,000 stolen vehicles are exported each year, primarily by professional thieves or people employed by them to effect the exportation. The recovery rate for stolen vehicles decreased from 86% in 1967 to 62.9% in 1984.

There is also a growing problem concerning the exportation of vehicle components. The parts are often shipped in sealed containers, making detection more difficult.

The legislation concerning the exporting and importing of self-propelled vehicles, other conveyances or parts thereof with altered vehicle identification numbers established penalties for violations and provided for the seizure and forfeiture of the vehicle, other conveyance or the parts. It is expected that these sanctions will both deter the exportation of stolen vehicles and improve the recovery rate of those vehicles which are stolen. The legislation also directed that regulations be prescribed by the Secretary of the Treasury with regard to the procedures for the lawful exportation of used self-propelled vehicles.

Proposed Action

The existing Customs Regulations (19 CFR Chapter I) contain no provisions dealing exclusively with the exportation of vehicles. To implement 19 U.S.C. 1627 and 1627a, it is proposed to establish a new Part 192, Customs Regulations (19 CFR Part 192). Sections 192.1 through 192.4 of Subpart A of Part 192 would set forth the procedures for the lawful exportation of used self-propelled vehicles. They would require a person attempting to export such a vehicle to furnish documentation, to include the vehicle identification number, sufficient to prove to Customs that the vehicle is lawfully owned by the exporter. Section 192.1 would define "self-propelled vehicle", "used", "ultimate purchaser", and "export", the terms used in Pub. L. 98–573 and the new regulations, so that they would be properly interpreted. Failure to comply with the requirements of the new regulations would result in a penalty of $500 for each violation. Also, exportation of the vehicle would only be permitted upon compliance with these regulations. Further, § 192.4 would reference the liabilities of carriers under title 46, United States Code, section 91, for inaccurately describing used self-propelled vehicles on the manifest or failing to include the vehicles on the manifest.

As proof of ownership of the vehicle by the exporter, Customs would accept an original certificate of title, or a memorandum of ownership, or a right of possession, or any other document sufficient to prove lawful ownership, such as a bill of sale or a sales invoice. In lieu of an original document, Customs would accept a certified copy.

The exporter must also present 2 facsimiles of the original document or certified copy. Customs would authenticate both facsimile documents, one of which would remain in the possession of the exporter, and the other of which will be collected by Customs for forwarding to the National Automobile Theft Bureau (NATB) on the same day. Customs would not retain the documentation relating to the exportation. The NATB would enter the VIN and other information on the exported vehicles into their data base for recordkeeping purposes.

The authentication by Customs would include the stamping of the facsimile documents with the date of their presentation. As to exportations at a land border, where the vehicle is to be transported by rail, highway, or under its own power, this date will most likely be the date of exportation. At sea borders, where the vehicle is to be transported by vessel, or at airports, where the vehicle is to be transported by aircraft, the date of presentation of the facsimile documents will often precede the actual date of exportation.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in

accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in § 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Paperwork Reduction Act

This document is subject to the Paperwork Reduction Act. Accordingly, a copy has been submitted to the Office of Management and Budget for review and comment pursuant to 44 U.S.C. 3504(h). Public comments relating to the information collection aspects of the proposal should be addressed to Customs and to the Office of Management and Budget at the address set forth in the ADDRESS portion of this document.

Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Chapter I

Customs duties and inspection, Imports, Exports.

Proposed Amendments

It is proposed to amend Chapter I of Title 19, Code of Federal Regulations (19 CFR Chapter I), by adding a new Part 192, to read as follows:

PART 192—EXPORT CONTROL

Sec.

Authority: 19 U.S.C. 66, 1624, 1627, 1627a, 1646a.

§ 192.0 Scope.

This part sets forth regulations pertaining to procedures for the lawful exportation of used self-propelled vehicles and the penalties and liabilities incurred for failure to comply with any of the procedures. This part also sets forth regulations concerning controls exercised by Customs with respect to the exportation of certain merchandise.

Subpart A—Exportation of Used Self-Propelled Vehicles

§ 192.1 Definitions.

The following are general definitions for the purposes of Subpart A:

Export. "Export" refers to the transportation of merchandise out of the U.S. for the purpose of being entered into the commerce of a foreign country.

Self-propelled vehicle. "Self-propelled vehicle" includes any automobile, truck, tractor, bus, motorcycle, motor home, self-propelled agricultural machinery, self-propelled construction equipment, self-propelled special use equipment, and any other self-propelled vehicle used or designed for running on land but not on rail.

Ultimate purchaser. "Ultimate purchaser" means the first person, other than a dealer purchasing in his capacity as a dealer, who in good faith purchases a self-propelled vehicle for purposes other than resale.

Used. "Used" refers to any self-propelled vehicle the equitable or legal title to which has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

§ 192.2 Requirements for exportation.

(a) *Basic requirements.* A person attempting to export a used self-propelled vehicle shall present to Customs both the vehicle and a document describing the vehicle, which includes the vehicle identification number (VIN). The person attempting to export the vehicle may employ an agent for the exportation of the vehicle.

(b) *Documentation required.* An original certificate of title, memorandum of ownership, or right of possession, or any other document sufficient to prove lawful ownership, such as a bill of sale or a sales invoice, or a certified copy of any of these documents, as well as 2 facsimiles of the original or certified copy, shall be presented.

(c) *When presented.* If the vehicle is to be transported by vessel or aircraft, the documentation must be presented before lading. If the vehicle is to be transported by rail, highway, or under its own power, the documentation is to be presented before exportation of the vehicle.

(d) *Authentication of documentation.* Customs shall authenticate both facsimile documents, one of which shall remain in the possession of the exporter and one of which shall be collected by Customs. Authentication will include the stamping of the facsimile documents with the date of presentation of the documents. The authenticated facsimile document will be the only acceptable evidence from the exporter of compliance with the requirements of this section.

§ 192.3 Penalties.

A penalty in the amount of $500 against the exporter for each vehicle attempted to be exported will be assessed for failure to comply with these requirements. Also, exportation of a vehicle will be permitted only upon compliance with these requirements.

§ 192.4 Liability of carriers.

Under the provisions of 46 U.S.C. 91, the vessel master is charged with the responsibility of presenting a true manifest. If used vehicles are not included on the manifest or are inaccurately described thereon, a liability of not more than $1,000 nor less than $500 will be incurred.

William von Raab,
Commissioner of Customs.

Approved:

Francis A. Keating, II,
Assistant Secretary of the Treasury.
December 15, 1986.

[FR Doc. 87-5581 Filed 3-16-87; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

Supplemental Security Income for the Aged, Blind, and Disabled; Prohibition on Direct Payment of Fees to Representatives

AGENCY: Social Security Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: In these proposed regulations, we are clarifying our current rules on fees for representatives of claimants for supplemental security income (SSI) benefits. We state explicitly that we will not withhold money from the claimant's retroactive

SSI benefits to pay a fee directly to the representative. These rules will apply regardless of whether the representative performs the services before the Social Security Administration (SSA) or before a court.

DATE: Comments must be submitted on or before May 18, 1987.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3–A–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Room 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–6785.

SUPPLEMENTARY INFORMATION: Title XVI of the Social Security Act (the Act) provides in section 1631(d)(2) that the Secretary of Health and Human Services (the Secretary) may prescribe the maximum fee which may be charged for services performed by a representative in connection with any claim before the Secretary for SSI benefits. Section 1631(d)(1) provides that section 207 of Title II applies to Title XVI to the same extent that it applies to title II. Section 207 provides that a person's benefits shall not be transferable or assignable, nor shall they be subject to execution, levy, attachment, garnishment, or other legal process. However, section 1631 is silent on how the fee is to be paid, thereby indicating a Congressional intention that SSA should have no responsibility for direct payment of the fee to the representative from the benefits of the SSI recipient.

In contrast to Title XVI, section 206 of the Act provides that in Title II claims for Old-Age, Survivors, and Disbility Insurance benefits (OASDI), we may pay an attorney an amount equal to no more than 25 percent of the claimant's past-due benefits toward the attorney's fee for representing the claimant. Since section 206 creates a statutory right in the attorney to receive payment under Title II, the prohibition in section 207 (see also 20 CFR 404.1820) against transfer or assignment of a beneficiary's right to receive Title II benefit payment does not apply to the direct payment of approved fees to attorneys under Title II. Section 207 is nonetheless fully applicable to Title XVI by operation of section 1631(d)(1) because, unlike Title II, there is no provision in Title XVI for paying an attorney's fee from past-due benefits.

The absence in Title XVI of a provision for paying a representative's fee from the past-due benefits of a recipient indicates that Congress did not want SSA to withhold any money from an SSI recipient's retroactive benefits to pay his or her representative's prescribed fee. Additionally, it is stated in the legislative history of Title XVI: "Where an individual who has requested a hearing is represented before the Secretary by an attorney, the provisions of the cash social security program (pertaining to attorney fees) would be applicable except that there would be no withholding of attorney fees from such individual's benefits. Your committee believes that to withhold such fees would be contrary to the purpose of the program." (H. Rep. No. 231, 92nd Cong., 1st Sess. 156 (1971)). Although this statement of intent deals with representation before the Secretary, we believe its intent obviously extends by implication to representation before a court also.

In order to clarify our policy on withholding of representatives' fees in Title XVI cases, we are revising 20 CFR 416.1520 and 416.1528 to provide explicity that we will not withhold an SSI recipient's retroactive benefits to pay a representative's fees because the statute does not authorize us to make such a direct payment and because such withholding violates the immunity of benefits from execution, garnishment, or legal process and the prohibition against their transfer or assignment set forth in section 207 of the Act, as made applicable to Title XVI through section 1631(d)(1) and the regulations that implement sections 207 and 1631(d)(1) codified at 20 CFR 416.533.

We do not believe that our policy will in any way hinder a Title XVI claimant from obtaining legal representation in the presentation of his or her claim. There are several reasons for our belief. First, many Title XVI claimants who wish to appeal an adverse decision by SSA are concurrently filing for both Title II and Title XVI benefits. Our policy is to encourage attorneys to include in their fee petitions their services for both benefits. We then pay up to 25 percent of the net past-due Title II benefits payable toward the approved fee for any services unique to the Title II claim and for services common to both claims. In addition, the nonprofit legal services agencies that represent many Title XVI claimants treat them as indigent persons who qualify for the agencies' services. Finally, these proposed regulations are intended only to state our longstanding policy of not using an SSI beneficiary's retroactive benefits to pay approved fees directly to a representative. Accordingly, these proposed regulations will not in any way impede representatives from collecting their approved fees directly from clients.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule because none of the threshold criteria described in Executive Order 12291 is met. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These proposed regulations impose no reporting/recordkeeping requirements requiring clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because they affect only the benefit amounts payable to individual recipients. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs No. 13.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

Dated: December 15, 1986.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: February 24, 1987.

Otis B. Bowen, M.D.,

Secretary of Health and Human Services.

PART 416—[AMENDED]

Subpart O of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. The authortiy citation for Subpart O is revised to read as follows:

Authority: Secs. 1102 and 1631(d) (1) and (2), Social Security Act; 49 Stat. 647, 86 Stat. 1475; 42 U.S.C. 1302 and 1383.

2. Section 416.1520 is amended by redesignating paragraph (d)(3) as (b)(4) to read as follows:

§ 416.1520 Fee for a representative's services.

* * * * *

(b) * * *

(4) We assume no responsibility for the payment of any fee for a representative's services before the Social Security Administration under Title XVI because that title does not authorize us to make such a payment. In addition, withholding supplemental security income (Title XVI) payments to pay a representative's fee violates the prohibition on transfer or assignment of benefits to someone other than the person eligible for those benefits, or certification of payments to any person claiming such payment by virtue of execution, levy or other legal process, as described in § 416.533.

* * * * *

3. Section 416.1528 is amended by adding two sentences at the end, to read as follows:

* * * * *

§ 416.1528 Proceedings before a State or Federal court.

* * * We assume no responsibility for the payment of any fee approved by a court for the services of a representative under Title XVI because that title does not authorize us to make such a payment. In addition, withholding supplemental security income (Title XVI) payments to pay a court-approved fee violates the prohibition on transfer or assignment of benefits to someone other than the person eligible for those benefits, or certification of payments to any person claiming such payment by virtue of execution, levy, or other legal process, as described in § 416.533.

[FR Doc. 87-5679 Filed 3-16-87; 8:45 am]
BILLING CODE 4190-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL-3169-6; KY-303]

Approval and Promulgation of Implementation Plans Kentucky; State Regulation for Prevention of Significant Deterioration (PSD) and Visibility New Source Review in Attainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action EPA is proposing to approve revisions to the Kentucky State Implementation Plan (SIP) which were submitted to EPA on February 20, 1986. Kentucky has revised its SIP to include a regulation for prevention of significant deterioration (PSD), a visibility monitoring strategy, and regulations for visibility new source review in attainment areas. These provisions meet the requirements of 40 CFR 51.166 (old 51.24), 51.305 and 51.307(a) and (d). The Kentucky Department for Natural Resources and Environmental Protection Cabinet (DNREPC) developed its PSD regulation according to EPA's PSD regulations (45 FR 52676, August 7, 1980). EPA's approval of the Kentucky PSD regulation will give the DNREPC full authority to implement and enforce the PSD program in Kentucky according to the State regulations, Kentucky currently has full authority to implement the PSD program by virtue of delegation of EPA authority to enforce EPA regulations at 40 CFR 52.21. Thus, approval of the State regulations will not substantially change implementation of the PSD program in Kentucky.

The visibility provisions partially satisfy the first part of the Settlement Agreement in *Environmental Defense Fund* v. *Thomas*, No. C82-6850 RPA (N.D. Cal.) described at 40 FR 20647 on May 16, 1984. EPA is proposing to remove the federal promulgation of Part 1 visibility provisions for monitoring and new source review in attainment areas because the State has submitted an approvable Part 1 plan. The principal effect of the new visibility protection regulations will be to require the State to consider visibility impacts when reviewing permit applications for new major sources and major modifications in attainment areas which could affect visibility in federal Class I areas.

DATE: To be considered, comments must be submitted on or before April 16, 1987.

ADDRESSES: Written comments should be addressed to Pamela Adams of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Kentucky may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE, Atlanta, Georgia 30365

Natural Resources and Environmental Protection Cabinet, Division of Air Pollution Control, 18 Reilly Road, Building #2, Fort Boone Plaza, Frankfort, Kentucky 40601

FOR FURTHER INFORMATION CONTACT: Pamela Adams of the EPA Region IV Air Programs Branch at the above address, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: Following public hearing in conformity with 40 CFR 51.102 (old 51.4), the Commonwealth of Kentucky's Department for Natural Resources and Environmental Protection Cabinet (DNREPC) adopted regulation changes involving PSD and visibility and submitted them to EPA on February 20, 1986, for approval as implementation plan revisions. EPA proposes to approve the revisions described in this notice. The regulations were considered at a public hearing held in Frankfort, Kentucky on December 30, 1985.

PSD

On December 5, 1974, EPA published regulations for PSD under the 1970 version of the Clean Air Act. These regulations established a program for protecting areas with air quality better than the National Ambient Air Quality Standards (NAAQS). The Clean Air Act Amendments of 1977 changed the 1970 Act and EPA's regulations in many respects, particularly with regard to PSD. In addition to mandating certain changes to EPA's PSD regulations immediately, the new Clean Air Act, in sections 160-169, contains comprehensive new PSD requirements. These new requirements are to be incorporated by states into their implementation plans.

On June 19, 1978 (43 FR 26380), and August 7, 1980 (45 FR 52676), EPA promulgated guidance to assist states in preparing State Implementation Plan (SIP) revisions meeting the new requirements.

On December 21, 1982 (47 FR 56882), EPA proposed approval of a previous version of Kentucky's regulation for Prevention of Significant Deterioration (401 DAR 51:017). This proposal will not be finalized because of the amount of time that has passed (4 years) and because the regulations proposed for approval are subperseded by the revised regulations being proposed for approval today. The revisions to Kentucky's regulations were made primarily to respond to EPA requirements stated in the original proposal. EPA has reviewed the revised regulations and found them to meet the requirements of 40 CFR 51.166 (old 51.24), except as noted below. Consequently, with the conditions stated below, EPA has decided to propose approval of 401 KAR 51:017 as part of the Kentucky SIP.

EPA's final approval of Kentucky's PSD regulation is contingent upon the removal from Kentucky's regulations of the violatile organic compound (VOC) definition contained in their general definitions. For PSD purposes this

definition improperly exempts compounds of low vapor pressure. Kentucky is currently proceeding to delete the definition.

EPA proposes to take no action on 51:017, section 20, which allows rescission of State PSD permits issued under earlier versions of the State PSD regulations, because those regulations were never a part of the federally approved SIP. Sources holding these permits also hold a federal PSD permit if the sources are subject to federal PSD requirements. Rescission of those federal permits, if appropriate, may be accomplished through the procedures of 40 CFR 52.21. Federal PSD permits will not be affected by section 20. Conversely, EPA's inaction will not affect Kentucky's ability to rescind state permits where appropriate.

EPA directly issued federal PSD permits to all new PSD sources in Kentucky between 1974 and 1980. Since that time, Kentucky has issued PSD permits pursuant to a delegation from EPA. For enforcement purposes, EPA must retain in the Kentucky SIP the EPA PSD regulations of 40 CFR 52.21 as they apply to those sources. As is the case presently, Kentucky will retain delegation of authority to enforce those permits.

Final approval of Kentucky's PSD regulation is contingent upon Kentucky's removing the second sentence of 51:017 section 8(3). This sentence can be interpreted as exempting PSD sources from PSD review if they agree to nonattainment review. Kentucky did not intend that interpretation, and is in the process of removing the provision.

Kentucky's regulation adopts the definition of "stationary source" which was promulgated on June 25, 1982 (47 FR 27554), by EPA. This definition excludes all vessel emissions from the definition for purposes of determining if the source is major. On January 17, 1984, the Court of Appeals for the District of Columbia Circuit overturned and remanded to EPA for further consideration this portion of EPA's new source review regulations. EPA has not yet completed its reconsideration of how vessel emissions are to be treated. Therefore, EPA's final approval of Kentucky's PSD regulation is contingent upon Kentucky's written commitment to revise their PSD regulation to incorporate revised vessel emission provisions as soon as EPA changes 40 CFR 51.166 (old 51.24), Vessel emissions are an insignificant part of Kentucky's emission inventory.

In the **Federal Register** of July 8, 1985 (50 FR 27892), EPA published final regulations to implement section 123 of the Clean Air Act, which regulates the manner in which dispresion of pollutants from a source may be considered in setting emission limitations. These regulations limit the amount of stack height or dispersion credit a source can claim while setting its emission limitations. The dispersion techniques include the use of stack heights greater than 65 meters and the use of other techniques to increase the dispersion of emissions rather than reduce the emissions of a source. Kentucky has committed to review all sources under EPA's new stack height regulations. The State is currently revising its stack height requirements to meet EPA's regulations.

On September 9, 1986, EPA revised the requirements for air quality modeling procedures to be used in processing PSD permits (51 FR 32176). The Kentucky regulations were adopted before that date and do not incorporate that change. Therefore, Kentucky has committed to adopt these changes to its regulations prior to 9 months after approval of these PSD regulations by EPA. Furthermore, Kentucky has committed to using the new modeling procedures in processing PSD permits in the interim. These commitments were formally stated in the December 5, 1986, letter to EPA from Kentucky. Final approval of the Kentucky regulations will be conditioned on Kentucky's meeting these commitments.

Action is being deferred on section 12(e) regarding 03 monitoring data. This section references 401 KAR 51:052 which is not currently a part of the federally approved State Implementation Plan (SIP). Section 12(e) will be approved at a later date provided that 401 KAR 51:052 is approved.

References are made in Kentucky's state regulations to 40 CFR 51.18, Review of new sources and modifications, and 40 CFR 51.24, Prevention of Significant Deterioration. EPA's 40 CFR 51 regulations were recodified in the November 7, 1986, **Federal Register**. Therefore, EPA will interpret former part 51 citations such as 51.18 and 51.24 as referring to the new citations in Part 51 as codified in the November 7, 1986, **Federal Register** notice.

Visibility

As a result of the Agreement in *Environmental Defense Fund v. Thomas*, the State of Kentucky was required to develop visibility new source review and visibility monitoring provisions to meet requirements of 40 CFR 51.305 and 51.307 and submit those provisions to EPA by May 6, 1985. Since Kentucky did not meet this submittal deadline, EPA was required to promulgate federal visibility provisions for the State.

This promulgation took place on February 13, 1986, at 51 FR 5504. The State has now submitted its "Plan for Visibility Protection in Class I Areas" for EPA's approval. This plan satisfies the visibility requirements of 40 CFR 51.305 and 51.307. EPA is therefore proposing to remove the federal promulgation of February 13, 1986, and to approve Kentucky's visibility plan in its place.

Visibility Narrative SIP

The new narrative section states that Kentucky's visibility goal is to "prevent any future impairment of visibility in Federal Class I areas which results from man-made air pollution." This is consistent with EPA's national goal of preventing any future and remedying any existing visibility impairment in mandatory Class I areas. Kentucky has only one mandatory Class I area, which is the Mammoth Cave National Park. No visibility impairment has been identified in this Class I area. The narrative visibility SIP also identifies the cause of visibility impairment, outlines the State's permitting procedures as they pertain to visibility new source review, and describes the State's visibility monitoring strategy.

Kentucky's "Visibility SIP" is composed of two main parts. First, it describes the State's visibility new source review regulations. Second, it describes Kentucky's visibility monitoring strategy.

Visibility New Source Review

Kentucky has revised its Prevention of Significant deterioration rule (401 KAR 51:017) to include notification procedures and review requirements for assessing potential visibility impacts of new major sources proposed to be located in attainment areas.

These regulations also allow the State to require monitoring of visibility in the Class I area near the proposed new facility or modification. These revisions meet the requirements of 40 CFR 51.307 for visibility new source review in attainment areas and include the necessary visibility definitions contained in 40 CFR 51.301.

Kentucky has revised its provisions for new source review in attainment areas to make it incumbent upon the State to:

- Notify the Federal Land Manager (FLM) within 30 days of receiving a permit application;
- Notify the FLM within 30 days of receiving advance notification of a permit application;

- Notify the FLM 60 days prior to any public hearing on the permit;
- Consider comments from the FLM received up to 30 days after the FLM has been notified;
- Include a visibility impairment analysis in the notification to the FLM;
- Require sources to monitor;
- Deny permits in cases where State agrees with the FLM that visibility impairment would occur; and
- Provide an explanation of nonconcurrence in the notice of public hearing or give notice as to where the explanation may be obtained if the State disagrees with the FLM that visibility impairment would occur.

Visibility Monitoring Strategy

The State's monitoring strategy will be to use data from the human observations that are made by the National Weather Service at the Bowling Green-Warren County Airport in Bowling Green, Kentucky.

The airport is approximately twenty-five air miles southwest of Mammoth Cave National Park. Observers at the airport obtain visibility readings every hour of the day and make determinations as to whether haze is present. Any visibility monitoring required by the State in a Class I area will be approved by the Federal Land Manager. Data will be used to provide background data and to determine if there are any long-term visibility trends.

Further details pertaining to these regulation changes are contained in the Technical Support Document, which is available for public inspection at EPA's Regional Office in Atlanta, Georgia.

Proposed Action: after receiving Kentucky's regulation for prevention of significant deterioration, visibility monitoring program and provisions for visibility new source review in attainment areas, EPA has found them to meet the requirements contained in 40 CFR 51.166 (old 51.24), 51.305 and 51.307 except as noted in "**SUPPLEMENTARY INFORMATION**" above. EPA is therefore proposing to conditionally approve Kentucky's regulations for prevention of significant deterioration, visibility monitoring strategy and visibility new source review in attainment area regulations as submitted on February 20, 1986 EPA is also proposing to partially remove the federal visibility plan which was promulgated for Kentucky on February 13, 1986, at 51 FR 5504.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP revisions do not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from requirements of section 3 of Executive Order 12291.

List of subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7642.

Dated: December 19, 1986.

Jack E. Ravan,

Regional Administrator.

[FR Doc. 87–5687 Filed 3–16–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 87–45; FCC 87–71]

Common Carrier Services; Reevaluation of the Depreciated-Original-Cost Standard In Setting Prices for Conveyances of Capital Interests In Overseas Communications Facilities

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Commission proposes to reevaluate its policy requiring that conveyances of capital interests in overseas communications facilities be priced at original cost minus depreciation (net book cost). The Commission also proposes that, for such conveyances, the net-book-cost standard be replaced by a more flexible, market-oriented pricing policy. This proposal is based on the Commission's tentative view that the current policy may no longer be necessary to serve the public interest, discourages socially-useful conveyances of overseas circuits, discourages investment and misallocates resources in overseas facilities and may lead to needed circuits as well as an impairment of competition in international communications services. The Commission also sets forth in the NPRM alternative restrictive pricing options for conveyances for overseas circuits and requests parties to propose additional options.

DATES: Comments are due on or before April 30, 1987, and reply comments on or before May 15, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Daniel A. Spiro, International Facilities Division, Common Carrier Bureau, (202) 632–7265.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's NPRM, CC Docket 87–45, adopted February 25, 1987, and released March 9, 1987.

1. In this NPRM, the Commission discusses the reasons for the current policy. It then discusses concerns that the current net-book-cost standard may underestimate the true value or a circuit and sets forth alternative pricing standards intended to resolve these concerns. Finally, it examines the need for a more flexible pricing policy.

2. The Commission states that it has applied the net-book-cost standard: (a) To protect U.S. ratepayers from overpriced carrier investments in facilities; and (b) to maintain competition in international communications services by assuring that existing carriers do not price circuits too high in order to prevent the entry of new competitors. However, it also states that it is concerned that the current standard underestimates the true value of a circuit and places an undue burden on the ratepayers of a facility's original owners/investors, for these ratepayers must incur the entire cost of holding idle circuits for future demand.

3. The Commission maintains that it remains concerned about the need to protect ratepayers and new entrants from excessive prices on overseas circuits. However, the Commission claims that recent and anticipated near-term developments seem to suggest that a more competitive market with alternative sources of capacity is developing for overseas facilities. If such a market is in fact developing, states the FCC, the public interest justifications for utilizing a rigid, Commission prescribed scheme for pricing circuit conveyances may no longer obtain. Further, the Commission contends that there may be important benefits to be derived from adopting a market-oriented approach in this area. The Commission claims that restricting the amount a carrier can realize from the conveyance of a circuit limits the incentive of carriers holding idle capacity to convey circuits to other carriers that seek to make immediate use of the circuits to provide service. According to the FCC, removing current price restrictions would encourage such socially-useful conveyances. The Commission also expresses concern that failure to remove current restrictions may ultimately discourage investment and misallocate resources in overseas facilities and may lead to shortages of

needed circuits as well as an impairment of competition in international services. The Commission therefore proposes that prices on circuits in overseas facilities authorized subsequent to a final decision in this proceeding be set according to negotiations between circuit-owners and prospective purchasers.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-5692 Filed 3-16-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-30; RM-5562]

Radio Broadcasting Services; Dardanelle, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Central Arkansas Broadcasting Company, Inc. proposing the substitution of Channel 271A for Channel 272A and modification of the license of station KWKK(FM) at Dardanelle, Arkansas.

DATES: Comments must be filed on or before May 1, 1987, and reply comments on or before May 18, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Martin R. Leader, Esq., David D. Oxenford, Esq., Fisher, Wayland, Cooper & Cooper, 1255—23rd St. NW., Suite 800, Washington, DC 20037 (Counsel).

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-30, adopted February 6, 1987, and released March 11, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-5700 Filed 3-16-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-38, RM-5502]

Radio Broadcasting Services; Carmel, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Wisdom Broadcasting Company, Inc. to allot Channel 238A to Carmel, CA as that community's second local FM broadcast service.

DATES: Comments must be filed on or before May 1, 1987, and reply comments on or before May 18, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or their counsel or consultant, as follows: Frank Jazzo, Esq., Fletcher, Heald and Hildreth, 1225 Connecticut Avenue NW., Suite 400, Washington, DC 20036-2679

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-38, adopted February 5, 1987, and released March 11, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-5697 Filed 3-16-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-37, RM-5595]

Radio Broadcasting Services; Brownsburg, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Bruce Quinn proposing to allot FM Channel 270A to Brownsburg, Indiana, as that community's first FM broadcast channel.

DATES: Comments must be filed on or before May 1, 1987, and reply comments on or before May 18, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Mr. Bruce Quinn, 824 South Hamilton Street, Delphi, Indiana 46923 ("Petitioner").

FOR FURTHER INFORMATION CONTACT: D. David Weston, (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-37, adopted February 10, 1987, and released March 11, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC

Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M. Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–5694 Filed 3–16–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–35; RM–5596]

Radio Broadcasting Services; Ellettsville, IN

AGENCY: Federal Comminications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Bruce Quinn proposing the allotment of FM Channel 286A of Ellettsville, Indiana, as that community's first FM channel.

DATES: Comments must be filed on or before May 1, 1987, and reply comments on or before May 18, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Mr. Bruce Quinn, 824 South Hamilton Street, Delphi, Indiana 46923 (Petitioner)

FOR FURTHER INFORMATION CONTACT: D. David Weston, (202) 634–6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–35, adopted February 10, 1987, and released March 11, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–5699 Filed 3–16–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–29, RM–5594]

Radio Broadcasting Services; Eddyville, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by "O"-Town Communications proposing the allotment of FM Channel 268C2 to Eddybille, Iowa, as that community's first FM channel. Finalization of this proposal is contingent upon the grant of a pending application and issuance of license to Station KFJB–FM, Channel 266, Marshalltown, Iowa, to operate as a Class C1 station.

DATES: Comments must be filed on or before May 1, 1987, and reply comments on or before May 18, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: "O"-Town Communications, c/o Mark A. McVey, 620 Lake Road, Ottumwa, Iowa 52501 (Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, (202) 634–6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–29, adopted February 5, 1987, and released March 11, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–5696 Filed 3–16–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–36; RM–5503]

Radio Broadcasting Services; Hiawatha, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by KNZA, Inc. proposing the substitution of Channel 268C2 for Channel 280A at Hiawatha, Kansas, and modification of the license of Station KNZA–FM,

Hiawatha, Kansas, to specify the operation on Channel 268C2.

DATES: Comments must be filed on or before May 1, 1987, and reply comments on or before May 18, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Richard J. Hayes, Esq., 1359 Black Meadow Road, Spotsylvania, Virginia 22553 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, (202) 634–6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–36, adopted February 10, 1987, and released March 11, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–5698 Filed 3–16–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–34, RM–5603]

Radio Broadcasting Services; Madisonville, Kentucky

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Madisonville Media, proposing the allotment of FM Channel 295A to Madisonville, Kentucky, as the community's second commerical FM channel. Finalization of this proposal is contingent upon the grant of a pending application filed by Station WWYN(FM), McKenize, Tennessee, to move its transmitter site and operate on a Class C1 station which will eliminate a short spacing problem.

DATES: Comments must be filed on or before May 1, 1987, and reply comments on or before May 18, 1987.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Gary S. Smithwick, Esq., Keith & Smithwick, 1320 Westgate Drive, Winston-Salem, NC 27103 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, (202) 634–6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–34, adopted February 10, 1987, and released March 11, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–5695 Filed 3–16–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–31, RM–5542]

Radio Broadcasting Services; Lisbon, ND

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes the substitution of FM Channel 291C2 for Channel 292A at Lisbon, North Dakota, at the request of Sheyenne Broadcasting, Inc., and the modification of its permit for Station KQLX–FM to specify operation on the higher powered channel. The channel can be allocated in compliance with the Commission's minimum distance separation requirements and used at Station KQLX–FM's present antenna site. In accordance with § 1.420(g) of the Commission's Rules, no othe expressions of interest in use of Channel 291C2 at Lisbon will be accepted.

DATE: Comments must be filed on or before May 1, 1987, and reply comments on or before May 11, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Stanley G. Emert, Jr., Esq., Watson & Emert, 2108 Plaza Tower, Knoxville, Tennessee 37929 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, (202) 634–6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–31, adopted February 10, 1987, and released March 11, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-5693 Filed 3-16-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87-04; Notice 1]

Federal Motor Vehicle Safety Standards, Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems,* to clarify the standard's parking brake requirements related to "false parking." False parking occurs where, subsequent to the application of a vehicle's parking brake by the driver, the design of the vehicle's parking brake system permits the parking brake force to gradually decrease, creating a risk of the vehicle rolling away after the driver has left the vehicle. The proposed amendments would ensure that systems which result in "false parking" are prohibited. As part of this action, the agency is also proposing to require that vehicles be capable of meeting requirements related to parking brake retardation force within two seconds of the time the parking brakes are actuated. This rulemaking action was initiated in response to a petition for rulemaking submitted by the California Highway Patrol.

DATES: Comments must be received on or before May 18, 1987. This proposal would become effective 180 days after publication of a final rule in the **Federal Register.**

ADDRESSES: Comments should refer to the docket and notice numbers set forth above and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. The docket is open on weekdays from 8 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Shadle, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC (202-366-5273).

SUPPLEMENTARY INFORMATION: On March 28, 1986, NHTSA published in the **Federal Register** a notice granting a petition for rulemaking submitted by the California Highway Patrol (CHP), requesting amendment of Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems.* CHP requested that the standard be amended to prohibit parking brake systems that have the probability of resulting in "false parking," i.e., a situation in which subsequent to application of a vehicle's parking brake by the driver, the parking brake force gradually decreases to the point that the vehicle could roll down hill.

The CHP petition largely focused on the "Mini-Max" parking brake, produced by International Transquip Industries, Inc. In some versions of the current design, the Mini-Max parking brake is applied with air pressure (usually about 100 psi) and held by air until the air pressure drops, in some cases to as low as 40 psi, to a point at which the brake becomes held mechanically. The drop in air pressure may occur over a period of many hours, during which time the braking force significantly decreases. CHP expressed concern that such a system could result in the rolling away of a tractor-trailer.

Subsequent to the CHP petition, NHTSA received comments on the petition and other information from International Transquip, as well as additional information from CHP. The agency notes International Transquip has stated that some versions of its brake sold under the Mini-Max name lock mechanically immediately on each application. Any such brake systems would be unaffected by this proposal. All of this material has been placed in the Petitions for Rulemaking (PRM) Docket for Standard No. 121.

Standard No. 121's current requirements concerning parking brake application and holding are set forth at section S5.6.3. That section states:

> *Application and holding.* The parking brake system shall be capable of achieving the minimum performance specified either in S5.6.1 or S5.6.2 with any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (except failure of a component of a brake chamber housing). Once applied, the parking brakes shall be held in the applied position solely by mechanical means.

Given the wording of the second sentence of section S5.6.3, there are at least two issues relating to whether brake systems with delayed mechanical application force comply with Standard No. 121. The first issue is whether such systems meet the requirement that, once applied, the parking brakes must be held solely by mechanical means. As indicated above, for some versions of the Mini-Max system, the parking brake is initially held by air and not by mechanical means, solely or otherwise, for many hours. Indeed, since a driver will often park the vehicle for a period of time shorter than that necessary to reach the point required to obtain mechanical holding, there will be many instances when the vehicle is parked and the parking brake never is held by mechanical means during the time the vehicle is parked. The agency notes that CHP argued that the only way such a system could be deemed to comply with section S5.6.3 is if the parking brakes are not considered to be "applied" until the air pressure drops low enough for the mechanical lock to function.

The second issue is whether the parking brakes are held in the applied position. While the air pressure is dropping but before the mechanical lock engages, the position of the brake components necessarily changes, resulting in reduced parking brake force. Thus, there is an issue whether the parking brake is being held in the applied position.

As noted by the CHP and International Transquip submissions, NHTSA has made a number of past interpretations concerning the second sentence of section S5.6.3. While the agency has never concluded that a brake system resulting in false parking is safe or provided an interpretation that the current Mini-Max systems at issue comply with section S5.6.3, some of the past interpretations could contribute to ambiguity concerning whether some of the features incorporated in some current Mini-Max designs are permitted by the standard. For this reason and in light of the agency's safety concerns about false parking, NHTSA granted the CHP petition to initiate rulemaking on

the false park issue rather than issuing an interpretation whether or not such systems comply with section S5.6.3.

NHTSA believes that there is a clear safety need for a vehicle to be stably parked when the driver leaves it, in order to prevent its rolling away. This is the reason for Standard No. 121's existing requirement that parking brakes be hold solely by mechanical means. In the absence of that requirement, a vehicle's parking brakes might be held solely by air. In the event of even very small leakage in the braking system, the air pressure could drop over time, resulting in the rolling away of the vehicle. This same safety concern is relevant to braking systems that result in false parking. If a vehicle is parked on a grade and the parking brake can be set so that it just holds the vehicle on the grade with the force applied when the driver actuates the parking brake control, the vehicle could roll away if that parking force later drops. Thus, a driver could be misled into parking on a grade which is only initially within the holding capability of the parking brake. The driver might park the vehicle and walk away thinking it was secure, only to have it later roll away. The safety hazards connected with large, heavy trucks rolling away could be particularly serious.

In order to ensure that vehicles are properly braked when the driver leaves the vehicle, it is first necessary for the parking brakes to be applied in a very short period of time after actuation of the parking brake control, i.e., while the driver is in the vehicle. When the driver actuates the parking brake control, a series of events is initiated which result in the pushing of the brake shoes or pads against the brake drum or disc. At the point when there is sustained holding of the brake shoes or pads against the brake drum or disc, it is clear that the parking brakes have been "applied," since the vehicle's parking brakes will then hold the vehicle on a grade.

While such application of the parking brakes occurs almost instantaneously after the parking brake control is actuated, CHP raised the issue of whether the parking brakes in a delayed mechanical system might be considered to be "applied" only hours later, i.e., when the mechanical lock engages. To resolve any possible ambiguity with respect to this issue, the agency is proposing to add requirements that vehices meet parking brake performance requirements within specified times.

NHTSA is proposing to require that vehicles be capable of meeting requirements related to stable parking (S5.6.1 or S5.6.2) within five seconds of the time the parking brakes are actuated, in order to ensure that vehilces are stably parked at the time drivers leave them. For trucks and buses, the actuation time would be defined as when the driver actuates the parking brake control. For trailers, the actuation time would be defined as when venting to the atmosphere of the front supply line connection is initiated. The five second time period would permit the use of air applied-mechanically held parking systems, which could require several seconds for the air pressure to be applied to the brake chamber, a mechanical latch or lock to be activated, and the air pressure to be evacuated to result in the "mechanically held" condition.

As discussed above, in order to ensure stable parking, it is necessary for the parking brakes to be held in the applied position solely by mechanical means. If parking brakes are held by air instead of by mechanical means, the air pressure could leak down over time, resulting in the rolling away of a vehicle. While section S5.6.3 already specifies that parking brakes must be held "solely by mechanical means," the agency is proposing new, additional language, to amplify that requirement. The proposed language would make it clear that from the end of the five second period, the parking brakes must be held in the applied position solely by mechanical means *and* the retardation force of the parking brake system cannot decrease in the event of a decrease in the air or brake fluid pressure of any of the vehicle's service or parking brake system. The proposed language would clearly prohibit braking systems that result in false parking as a result of air pressure leaking down over long periods of time, since any decrease in air pressure would not be permitted to result in a decrease in parking brake force.

While NHTSA considers it appropriate to permit up to five seconds for the parking brake system to achieve a "mechanically held" condition, it believes that the time required for the parking brake system to generate significant levels of retardation force should be shorter. The agency believes that retardation force should be generated in as short a time as is practicable, since the parking system is often also used as an emergency braking system. Also, there is a definite need for fast parking brake apply times on some trailers, because there are tractors which modulate the parking brakes through the supply line to provide for trailer braking in the event of a control line failure. A trailer with slow parking brake times would degrade the emergency braking performance of combinations having such tractors.

In order to address this issue, NHTSA is proposing to require that vehicles be capable of meeting requirements related to parking brake retardation force within two seconds of the time the parking brakes are actuated. Actuation time would be defined the same as for the requirements related to stable parking. The agency is not aware of any vehicles which do not already meet this requirement.

NHTSA notes that these proposed performance requirements would not mandate use of spring brakes, nor prohibit air-applied parking brakes. As with all of the ageny's safety standards, any design which could meet the specified performance requirements would be permitted.

The specific amendments being proposed represent one way of amplifying the existing requirements to make it clear that braking systems which result in false parking are prohibited. Comments are specifically requested on this approach and on alternative approaches. Depending on the comments, the agency may use a different approach to accomplish the same general purpose. The agency is proposing that the amendments become effective 180 days after publication of a final rule.

The number of parking brake systems that could be affected by this proposal is very small. NHTSA does not have information concerning the specific number of braking systems sold by International Transquip that could be affected. The agency notes that it may be possible for that company to design all of its braking system configurations so that they do not result in false parking. NHTSA requests comment on whether any other current parking brake systems would be affected by the proposal. The agency understands that the DD3 parking brake system, produced by Bendix, results in a small loss of initial parking brake force. The agency requests comment on when that loss of parking force occurs, and on whether and how the DD3 system would be affected by the proposal. NHTSA is also aware of designs for delayed spring parking brakes, although it does not know whether any such designs are currently being produced for sale in this country.

NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. As already noted, the

proposal would essentially clarify existing requirements and would result in no impacts on the vast majority of air-braked vehicles. The agency has also concluded that the impacts are so minor as not to require a full regulatory evaluation.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. The agency is aware of only one manufacturer that might be classified as a small manufacturer, International Transquip, which may be affected by the proposal. Other than that company, small businesses, small organizations, and small governmental units would be affected by the proposed amendments only to the extent that they purchase motor vehicles equipped with certain of that manufacturer's parking brake systems. The amendments would not have any significant effect on the price of those vehicles. Accordingly, no regulatory flexibility analysis has been prepared.

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishers to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request of confidentiality should be accompained by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also the considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR Part 571 be amended as follows:

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50.

2. S5.6.3 of § 571.121 would be revised to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S5.6.3 *Application and holding.* The parking brakes shall be capable of meeting the requirements of S5.6.3.1 and S5.6.3.2.

S5.6.3.1 For trucks and buses, at any time after two seconds from the time of actuation of the parking brake control, and for trailers, at any time after two seconds from the time venting to the atmosphere of the front supply line connection is initiated, the parking brake system shall achieve the minimum performance specified either in S5.6.1 or S5.6.2 with any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (except failure of a component of a brake chamber housing).

S5.6.3.2 For trucks and buses, at any time after five seconds from the time of actuation of the parking brake control, and for trailers, at any time after five seconds from the time venting to the atmosphere of the front supply line connection is initiated, the parking brakes shall be held in the applied position solely by mechanical means and the retardation force of the parking brake system shall not decrease in the event of a decrease in the air or brake fluid pressure in any of the vehicle's service or parking brake systems.

* * * * *

Issued on March 11, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87-5663 Filed 3-16-87; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 61092-7034]

Tanner Crab off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA requests comment on this proposed rule to implement a Secretarial Amendment which would repeal the North Pacific Fishery Management Council's (Council) Fishery Management Plan for the Commerical Tanner Crab Fishery Off the Coast of Alaska (FMP) and its implementing regulations. The Council is preparing a new FMP to replace this plan. This action is necessary because the current FMP and its implementing regulations fail to provide for timely coordination with the State of Alaska's management actions and may result in violation of five national standards of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

DATE: Comments well be accepted until April 22, 1987.

ADDRESS: Copies of the Secretarial Amendment may be requested from and comments on this proposed rule and the Secretarial Amendment should be sent to Robert W. McVey, Regional Director, National Marine Fisheries Service, P.O. Box 1668 Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin, Fishery Biologist, 907-586-7229.

SUPPLEMENTARY INFORMATION: The FMP was adopted by the Council and approved by the Assistant Administrator for Fisheries on behalf of the Secretary and published in the Federal Register on May 16, 1978 (43 FR 211170). The FMP has been amended

nine times, most recently on September 12, 1984 (49 FR 35779).

The objective of the FMP is to establish management measures necessary to conserve and manage Tanner crab stocks as a unit throughout their range in compliance with the national standards of the Magnuson Act and other applicable Federal law (FMP section 8.3.1). In order to achieve this objective and effectively coordinate management with the State of Alaska, the FMP adopted a management system similar to that employed by the State (FMP section 3.3.3.2).

The management measures adopted by the FMP are characteristic of plans developed shortly after the Magnuson Act was enacted. Optimum yield (OY) is specified rigidly as a fixed range of the amounts of Tanner crab that may be taken in specified areas each year. Maximum sustainable yield (MSY), and season opening and closing dates, are similarly specified for each area. Therefore, a relatively long time is required to alter the various fishing areas and the OYs assigned to them to reflect the changing condition of the Tanner crab stocks because such changes must be made by plan amendment. The FMP does attempt to provide some flexibility by authorizing the NMFS Regional Director to adjust season dates and fishing areas by field order in the course of a season (FMP section 8.3.1.2.). Under the FMP and its implementing regulations at 50 CFR Part 671, the Regional Director may issue such a field order when he determines in the course of the fishing year that the condition of the Tanner crab stocks within a given management area is substantially different from the condition anticipated at the beginning of the fishing year, and that such differences support the need for inseason conservation measures to protect those stocks.

Because the FMP, to a great extent, adopts the present State management regime, effective management of the Tanner crab fishery depends on close and timely cooperation between NMFS and the State of Alaska. However, problems with the cooperative management system have become apparent. Because fishing areas and the OYs and season dates assigned to them are rigidly fixed in the FMP, NMFS may not, during the course of a season, impose the State's annual harvest guidelines and closures in the 3–200 mile exclusive economic zone (EEZ) unless implemented through plan amendment, promulgation of an emergency interim rule, or issuance of a field order.

Generally, only a field order can be carried out in the short time available to coordinate State and Federal management. Practice has shown, however, that in many instances the present field order authority is too narrowly prescribed to allow NMFS to coordinate Federal actions with State inseason management decisions. For example, State managers make estimates of stock abundance before the beginning of the fishing year which are published as annual harvest guidelines and often subsequently verified by information provided in the course of the fishery. Under these circumstances, a field order based on a State closure decision is not authorized by the FMP because the stock's condition is not different than the condition anticipated at the beginning of the year. Thus, the fishery must be allowed to continue in the EEZ until either an FMP amendment or emergency interim rule is implemented, or until the resulting continued fishing of the stock causes its condition to differ substantially from that anticipated at the beginning of the fishing year.

Other situations arise in the fishery when State managers determine that a season date in an area should be advanced in response to social or economic considerations. NMFS may not advance a season opening or closure in this case by field order since the field order authority permits inseason adjustments only to protect Tanner crab stocks. For the same reason NMFS may not allow extension of a season if a Tanner crab stock should prove more abundant than was anticipated before the beginning of the fishing year.

In certain situations the failure to provide for timely coordination with the State's management actions may result in violations of national standard 1 of Magnuson Act section 301(a) by failing to prevent overfishing. The FMP may also violate national standard 2 in that conservation and management measures may not be based upon the best scientific information available. Compliance with national standards 5, 6, and 7 is also called into question as the FMP fails, where practicable, to promote efficiency in the utilization of fishery resources; fails to account for variations and contingencies in fisheries; and fails, where practicable, to minimize costs and avoid unnecessary duplication. The abundance of Tanner crab off the coast of Alaska varies greatly from year to year and the *C. bairdi* Tanner crab stock currently is in a state of severe decline.

As a result of these large fluctuations in stock abundance, the rigid specification of OYs and MSYs in terms of specific annual quantities of Tanner crab that can be changed only by FMP amendment may violate the requirement of Magnuson Act section 303(a)(3) that a plan specify MSY and OY. Finally, the problems just described call into question conformance of the FMP's regulations with Executive Order 12291.

On November 1, 1986, NOAA promulgated an emergency interim rule, at the request of the Council, to repeal the regulations implementing the Tanner crab FMP for a period of 90 days (November 1, 1986, through January 29, 1987 (51 FR 40027).

At its December 1986 meeting, the Council voted to extend the emergency interim rule for a second 90-day period (January 30 through April 29, 1987). When the second 90-day period expires, the current regulations will come back into effect unless permanently amended or repealed. At the December meeting, the Council also decided to begin preparation of a new FMP. However, the Council also determined that the 180 days duration of the two emergency interim rules was insufficient to complete a study of management options, prepare a new FMP, and complete the Secretarial review process. Thus, the Council requested the Secretary to prepare and implement a Secretarial amendment to repeal the FMP and its implementing regulations until such time as the Council prepares and the Secretary approves and implements a new FMP. Therefore, this Secretarial amendment will ensure that the Council has adequate time to study management alternatives and to develop a new FMP. In the interim, management authority will rest with the State of Alaska.

The Council has appointed a working committee to oversee the drafting of a new FMP. The Council intends to complete preparation of the new management regime in time for implementation for the 1988–89 Tanner crab season.

For the reasons stated above, the FMP and its implementing regulations are proposed to be repealed.

Classification

The Magnuson Act requires the Secretary of Commerce to publish proposed regulations within 15 days following submission of a Secretarial Amendment to the Council.

The Assistant Administrator prepared a draft environmental assessment (EA) for the Secretarial Amendment. He concluded that there will be no significant impact on the human environment. A copy of the EA is available (see **ADDRESSES**).

The Administrator of NOAA has determined that this rule is not a "major

rule" requiring a regulatory impact analysis under Executive Order 12291 on the basis of an analysis by the Assistant Administrator for Fisheries conducted for this action. A copy of this analysis is available (see **ADDRESSES**).

The General Counsel for the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities because State of Alaska management regulations impose essentially the same requirements as the existing Federal Tanner crab regulations. As a result, a regulatory flexibility analysis was not prepared.

The Assistant Administrator has determined that this action will be consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This proposed rule would temporarily repeal collection of information requirements previously approved under OMB Control Numbers 0648–0016, 0648–0097 and 0648–0114. Because NOAA expects to reinstate the collection of information requirements under the new FMP, no request to withdraw the OMB approval of the information requirements will be submitted to OMB at this time.

List of Subjects in 50 CFR Part 671

Fisheries, Reporting and recordkeeping requirements.

Dated: March 12, 1987.

William E. Evans,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 671 is proposed to be amended as follows:

PART 671—TANNER CRAB OFF ALASKA [RESERVED]

1. The authority citation for Part 671 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Part 671 is removed and this part number reserved.

[FR Doc. 87–5741 Filed 3–12–87; 4:48 pm]
BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 52, No. 51
Tuesday, March 17, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Kuiu Island Area Analysis

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement to refine management direction for Kuiu Island on the Petersburg Ranger District, Tongass National Forest, Alaska.

DATE: Written comments and suggestions concerning the scope of the analysis should be received by April 13, 1987.

ADDRESS: Requests for further information and written comments and suggestions concerning the scope of the analysis must be sent to Morris D. Huffman, Acting District Ranger, Petersburg Ranger District, P.O. Box 1328, Petersburg, Alaska 99833.

SUPPLEMENTARY INFORMATION: The Tongass National Forest Land Management Plan (TLMP) which was completed in March 1979 and amended in July 1986, allocated lands on Kuiu Island to Land Use Designations (LUD) I, II, III and IV. The LUD I area is managed as wilderness. The LUD II areas are managed in a roadless state. LUD III and IV areas are managed for a mix of commodity and amenity resource uses. The proposed Area Analysis will not result in changes in the land use designations, but will refine management objectives, standards and guidelines for implementing projects on Kuiu Island and may amend the Forest Plan.

The Area Analysis will consider alternative mixes of management standards and guidelines where necessary to resolve potential resource use conflicts. Most of these potential use conflicts are expected in the LUD III and IV areas of the island, and the analysis will largely concentrate on these areas. Alternatives will address only management activities allowed by the Forest Plan in the various land use designations. The total road network needed to meet resource objectives will be examined as will multiple timber harvest entries.

Previous planning activities relating to Kuiu Island include the Tongass Land Management Plan and EIS's for the 1981–86 and 1986–90 operating periods for the Alaska Pulp Corporation long-term timber sale. Decisions documented in the Records of Decision for those planning actions are being implemented and will influence the current analysis.

Public participation will be especially important at several points during the analysis, beginning with the scoping process (40CFR 1501.7). The Forest Service will be seeking information, comments and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process will include:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects, and connected actions).
6. Determining potential cooperating agencies and task assignments.

Public meetings are scheduled for April, 1987 in communities that could be directly affected by Forest Service decisions about resource management on Kuiu Island. Notice of meeting dates and locations will be published in most Southeast Alaska newspapers and posted in public buildings of local communities.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review approximately October 15, 1987. At that time EPA will publish a notice of availability of the DEIS in the Federal Register.

The public comment period on the DEIS will be 60 days from the date the EPA notice of availability appears in the Federal Register. It is very important that reviewers participate at that time. To be the most helpful, comments about the DEIS should be as specific as possible and should address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality (CEQ) Regulations for implementing the procedual provisions of NEPA at 40 CFR 1503.3). Federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. NEPA case law supports the proposition that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (FEIS). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period ends, the comments will be analyzed and considered by the Forest Service in preparing the FEIS. The FEIS is scheduled to be completed by March 1988. The Forest Service is required to respond in the FEIS to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making decisions regarding Area Analysis for Kuiu Island. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR 211.18. Robert E. Lynn, Forest Supervisor, Stikine Area of the Tongass National Forest, Alaska Region, Petersburg, Alaska is the responsible official.

Dated: March 6, 1987.

Robert E. Lynn,

Forest Supervisor.

[FR Doc. 87–5651 Filed 3–16–87; 8:45 am]

BILLING CODE 3410–11–M

CENTRAL INTELLIGENCE AGENCY

New Survivor and Health Insurance Benefit Entitlements for Former Spouses Divorced Prior to 15 November 1982 Under the Central Intelligence Agency Retirement and Disability System; Qualified Former Spouses Should Respond to the Address Listed Below

On 27 October 1986, President Reagan signed the Intelligence Authorization Act for Fiscal Year 1987 (Pub. L. 99-569), effective 1 October 1986. This act will: (1) Provide survivor benefits for certain former spouses of Central Intelligence Agency employees, former employees, and annuitants who did not benefit from the CIA Spouses' Retirement Equity Act of 1982 (Pub. L. 97-269) because they were divorced prior to the effective date of that act (15 November 1982) and (2) permit such former spouses divorced prior to 7 May 1985 to enroll in the Federal Employees Health Benefits Plan (FEHBP) in certain circumstances. Eligibility for survivor benefits is based on participation in the Central Intelligence Agency Retirement and Disability System (CIARDS).

These benefits have no effect on a retiree's annuity. Neither do they affect any other former or current spouse's right to the retiree's annuity. The former spouse survivor annuity provided by this legislation is financed solely by special appropriation to the CIARDS retirement fund.

For further information about applying for survivor and health benefits under provisions of the Intelligence Authorization Act for Fiscal Year 1987, please write to the following address: Central Intelligence Agency, Chief, Retirement Division, Post Office Box 1925, Washington, DC 20013.

Dated: March 9, 1987.

Approved:

William F. Donnelly,

Deputy Director for Administration.

[FR Doc. 87-5707 Filed 3-16-87; 8:45 am]

BILLING CODE 6310-02-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the privisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census

Title: Emigration and Americans Living Abroad Survey/Supplement to the July 1987 Current Population Survey

Form Number: Agency—CPS-1, CPS-260; OMB—NA

Type of Request: New collection

Burden: 57,000 respondents; 713 reporting hours

Needs and Uses: The data on emigrants and Americans living abroad will be used internally by the Census Bureau to assist in inter-censal population estimates and to evaluate the coverage of the Decennial Censuses of 1980 and 1990.

Affected Public: Individuals or households

Frequency: One time

Respondent's Obligation: Voluntary

OMB Desk Officer: Don Arbuckle, 395-7340

Agency: Bureau of the Census

Title: Enterprise Summary Report

Form Number: Agency—ES-9100; OMB—NA

Type of Request: New collection

Burden: 10,000 respondents; 12,500 reporting hours

Needs and Uses: The economic censuses, constitute the primary source of facts about the structure and functioning of a large segment of the economy and provide essential information for government, business, and the general public. They provide an important part of the framework for the national accounts and serve as benchmarks for economic indicators.

Affected Public: Businesses or other for-profit institutions

Frequency: One time

Respondent's Obligation: Mandatory

OMB Desk Officer: Don Arbuckle, 395-7340

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: March 10, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87-5711 Filed 3-16-87; 8:45am]

BILLING CODE 3510-07-M

[Docket No. 70239-7039]

Request for Information on the Implementation of the Liability Risk Retention Act of 1986 for Use in the Preparation of a Mandated Report to Congress

AGENCY: Office of the Under Secretary for Economic Affairs, U.S. Department of Commerce.

ACTION: Notice and request for submission of information on the implementation of the Liability Risk Retention Act of 1986.

Background

The Office of the Under Secretary for Economic Affairs of the Department of Commerce is preparing a report for the Secretary of Commerce to submit to the Congress on the implementation of the Liability Risk Retention Act of 1986 and is seeking information for use in the preparation of the report.

The Liability Risk Retention Act of 1986 mandates the Secretary of Commerce to submit two reports to Congress on the implementation of the Act. The first report is due no later than September 1, 1987.

The report is to be based on consultations with State insurance commissioners, risk retention groups, purchasing groups, and other interested parties, and shall describe the Secretary's views concerning:

1. The contribution of the Act toward resolution of problems relating to the unavailability and unaffordability of liability insurance;

2. The extent to which the structure of regulation and preemption established by the Act is satisfactory;

3. The extent to which, in the implementation of the Act, the public is protected from unsound financial practices and other commercial abuses involving risk retention groups and purchasing groups;

4. The causes of any financial difficulties or risk retention groups and purchasing groups;

5. The extent to which risk retention groups and purchasing groups have been discriminated against under State laws, practices and procedures contrary to the provisions and underlying policy of the Act and the Product Liability Risk Retention Act (as amended by the Liability Risk Retention Act of 1986); and

6. Such other comments and conclusions as the Secretary deems relevant to assessment of the implementation of the act.

Any person or groups who have information which would be useful in

addressing the above issues or who wish to comment on the implementation of the Act are requested to contact the staff members listed below.

Closing Date: August 1, 1987.

FOR FURTHER INFORMATION CONTACT: Edward T. Barrett, II (202-377-2101) or Jane W. Molloy (202-377-5926). Address: Room 4858, U.S. Department of Commerce, Washington, DC 20230.

Dated: February 27, 1987.

Robert Ortner,

Under Secretary for Economic Affairs.

[FR Doc. 87-5650 Filed 3-16-87; 8:45 am]

BILLING CODE 3510-EA-M

International Trade Administration

[A-351-605]

Frozen Concentrated Orange Juice From Brazil: Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration/Import Administration/ Commerce.

ACTION: Notice.

SUMMARY: We have determined that frozen concentrated orange juice (FCOJ) from Brazil is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the United States Customs Service to continue to suspend the liquidation of all entries of FCOJ from Brazil, except those from Sucocitrico Cutrale, S.A., that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margins as described in the "Continuation of Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: March 17, 1987.

FOR FURTHER INFORMATION CONTACT: Raymond G. Busen (202/377-3464) or Mary S. Clapp (202/377-1769), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION

Final Determination

We have determined that FCOJ from Brazil is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice. Cutrale is excluded from this determination since it had no sales at less than fair value during the period of investigation.

Case History

On May 9, 1986, we received a petition from Florida Citrus Mutual (FCM), a voluntary cooperative marketing association of growers of citrus fruit for processing, filed on behalf of the United States industry producing FCOJ. In compliance with the filing requirements of section 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of FCOJ from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening material injury to, a United States industry. The petition also alleged that sales of the subject merchandise in Brazil were too small to use as a basis for determining foreign market value and that sales to third countries are at less than the cost of production.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on May 29, 1986 (51 FR 20321, June 4, 1986). On June 23, 1986, the ITC determined that there is reasonable indication that imports of FCOJ from Brazil are materially injuring a U.S. industry (51 FR 24238, July 2, 1986).

On June 30, 1986, and July 3, 1986, respectively, we presented an antidumping duty questionnaire to Sucocitrico Cutrale, S.A. (Cutrale) and Citrosuco Paulista, S.A. (Citrosuco). Our questionnaire to Cutrale included questions on home market sales, as we had determined that Cutrale had sufficient home market sales to form the basis for determining fair value. Our questionnaire to Citrosuco included questions relating to third country sales and cost of production and/or constructed value, because we determined that Citrosuco's home market sales were not adequate for determining foreign market value. Respondents Cutrale and Citrosuco were requested to answer the questionnaire by August 6, 1986, and August 11, 1986, respectively. At the request of Citrosuco, we granted that firm an extension until August 25, 1986. On August 6 and 8, 1986, we received incomplete responses from Cutrale. In a letter dated August 18, 1986, the Department requested supplemental information from Cutrale. On August 25, 1986, we received Citrosuco's response. On September 2, 8, and 11, 1986, we received supplemental information from Cutrale.

On September 19, 1986, petitioners alleged that Cutrale's home market sales were at less than the cost of production and requested that the Department conduct a cost investigation. On September 22, 1986, we requested supplemental information from Citrosuco. On September 29 and 30, 1986, we received supplemental information from Citrosuco. Also, on September 29, we notified Cutrale that we had accepted petitioners' allegation of below cost home market sales and requested that Cutrale submit cost of production information by October 20, 1986.

On October 9, October 14, October 30, November 7, and December 10, 1986, respectively, Alcoma Packing Company, Inc., Berry Citrus Products Inc., Citrus World, Inc., B&W Canning Co., Caulkins Indiantown Citrus Co., and Citrus Belle, producers of FCOJ and growers which produce oranges for processing into FCOJ, filed as co-petitioners.

We denied a request by petitioners to postpone the preliminary determination, because the request was not timely, pursuant to § 353.39(b) of our regulations. On October 16, 1986, we issued an affirmative preliminary determination of sales at less than fair value (51 FR 37613, October 23, 1986). At the request of respondent Citrosuco, we postponed our final determination until March 9, 1987 (51 FR 39692, October 30, 1986).

On October 27, 1986, we received an incomplete cost of production response from Cutrale. On December 2 and 12, 1986, respectively, we requested and received supplemental cost of production information from Cutrale.

We provided interested parties with an opportunity to submit views orally or in writing. Accordingly, we held a public hearing on February 6, 1987.

Standing Issue

The petition in this case was brought by FCM, an association of growers of citrus fruit for processing "on behalf of the U.S. industry producing FCOJ, including growers and processors." During the investigation, the petition was amended to add six FCOJ processors as co-petitioners.

Various parties, including the National Juice Products Association, Cargill Citrus Ltda., Procter & Gamble, Coca-Cola Company, and Citrosuco, have argued that petitioners do not have standing because the two necessary statutory requirements have not been

met. Section 732(b)(1) of the Act, 19 U.S.C. 1673a(b)(1), requires that petitions be brought by an "interested party . . . on behalf of an industry."

The term "interested party" is defined, in relevant part, as "a manufacturer, producer or wholesaler in the United States of a like product," or as "a trade or business association a majority of whose members manufacture, produce or wholesale a like product in the United States." 19 U.S.C. 1677(9) (C) and (E). The Act defines "industry" also in terms of production of a like product; the term is defined as "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." 19 U.S.C. 1677(4)(A). The like product in this investigation has been defined by the ITC as FCOJ.

The parties opposing this investigation maintain that FCM is not an interested party because its members do not produce the like product. We find that it is not necessary to reach a determination on this issue. As we indicated in our preliminary determination, even if FCM were not considered to be an interested party, this does not invalidate the petition, in terms of the interested party requirement. The six co-petitioners, processors of FCOJ, are indisputably producers of the like product, and thus interested parties.

In addition to arguing that FCM is not an interested party, the parties opposing this investigation maintain that the addition of the processors as co-petitioners cannot serve to "cure" a defect in as fundamental a matter as standing. Instead, it is suggested, the processors could file a new petition. The statute provides that a "[p]etition may be amended at such time, upon such conditions, as the [Department] . . . may permit." 19 U.S.C. 1673a(b)(1). The Department has exercised its discretion to permit petition amendments on matters of standing in previous cases. *See, e.g. Certain Textile Mill Products and Apparel from Malaysia,* (50 FR 9852, March 12, 1985); *Live Swine and Fresh, Chilled and Frozen Pork Products from Canada,* (50 FR 25097, June 17, 1985). We believe that the circumstances of this case also call for permitting the petition amendments. The law on standing in cases involving processed agricultural products, in which the industry has been defined to include the growing and processing sectors, is not well developed. Moreover, in light of the earlier countervailing duty case on FCOJ from Brazil, *Frozen Concentrated Orange Juice from Brazil,* (48 FR 25245, June 6, 1983), in which FCM was the sole petitioner and in which standing was not raised as an issue, FCM had good reason to believe that it would qualify as an interested party in this case.

With respect to the second requirement for standing, that a petition be brought "on behalf of an industry," the parties opposing this investigation offer, in essence, two arguments. First, they argue that petitioners must establish affirmatively that they have filed "on behalf of" the industry involved, and that petitioners have not done so. Second, they maintain that it has been established in this case that a majority of the industry opposes the investigation.

For the proposition that a petitioner must *ab initio* establish majority industry support, the opposing parties rely on *Gilmore Steel Corp.* v. *United States,* 585 F. Supp. 670 (Ct. Int'l Trade 1984), in which the court made the statement that a petitioner "must also show that a majority of [the] industry backs its petition." However, this statement is *dicta.* That case involved an altogether different situation. The court was considering whether the Department had the authority to terminate an investigation where a majority of the domestic industry affirmatively opposed the petition and had voiced its opposition to the Department. As we have frequently stated, *see e.g. Certain Stainless Steel Hollow Products from Sweden,* (52 FR 5794, February 26, 1987); *Certain Fresh Atlantic Groundfish from Canada,* (51 FR 10041, March 24, 1986), there is nothing in the statute, its legislative history, or our regulations which requires that petitioners establish affirmatively that they have the support of a majority of their industries. In many cases, such a requirement would be so onerous as to preclude access to import relief under the antidumping and countervailing duty laws.

The opposing parties also argue that it has been shown that a majority of the industry opposes this investigation. Between the time of the initiation of this investigation and our preliminary determination, we received evidence of industry opposition to this case sufficient to provide a clear indication that there were grounds to doubt petitioners' standing, and to warrant our reviewing whether the opposing parties do, in fact, represent a major proportion of the domestic industry. Accordingly, on December 10, 1986, we sent a questionnaire to those firms that had expressed opposition to the case, to elicit data on the extent of industry opposition. We received responses through February 1987, which show that fourteen, and perhaps sixteen, FCOJ processors oppose the case (two of these firms submitted contradictory data).

In its most recent submission, the National Juice Products Association has calculated that the sixteen firms account for 52.9 percent of FCOJ production in the United States, and 51.9 percent of the total number of boxes of oranges processed (for all purposes, including uses other than FCOJ production).

The validity of these percentages is questionable, since the data from which they are derived is not entirely firm. The 52.9 percent measure of opposition, based on FCOJ production in the United States, is calculated using a denominator (to represent total FCOJ production in the United States) which is based upon a survey by the A.C. Nielsen Reporting Service of selected retail outlets to measure retail orange juice consumption in the United States. To arrive at an *estimate* of the total domestic orange juice market, these survey results were then adjusted on the basis of an *estimate* of the proportion of this total market which is accounted for by retail sales. A further *estimate* was used to calculate the proportion of the total domestic orange juice market attributable to FCOJ. Furthermore, this 52.9 percent measure of opposition includes data from one firm which may not, in fact, oppose the investigation. (It submitted contradictory information.) Also included are data from another firm of which we are unsure whether it produces FCOJ. (It also submitted contradictory information.)

In addition to the succession of steps of estimations, rather than calculation, which resulted in this number, the denominator in the fraction leading to the percentage has varied across responding companies. The estimated size of the market varies substantially according to letters we received from processors which themselves object to the case. The 51.9 percent measure of opposition is based on total number of domestic oranges processed. This is not an appropriate basis for defining the FCOJ industry, because it includes oranges processed for purposes other than the production of FCOJ.

Many of these firms are significant importers of FCOJ from Brazil. In our preliminary determination we sought comments on whether it would be appropriate to exclude these firms from the definition of the domestic industry, for purposes of measuring standing, pursuant to section 771(4)(B) of the Act,

19 U.S.C. 1677(4)(B). Section 771(4)(B) provides that "[w]hen some producers are related to the exporters or importers, or are themselves importers of the allegedly subsidized or dumped merchandise, the term 'industry' may be applied in *appropriate circumstances* by excluding such producers from those included in the industry." (emphasis added).

The parties opposing this investigation have argued that exclusion is not appropriate in this case because most domestic FCOJ processors allegedly are also importers of Brazilian FCOJ. Under these circumstances, we agree that it would not be appropriate to exclude *all* processor-importers. However, the analysis is not the same for *all* such firms; obviously, much depends upon the degree to which a firm is an importer.

The National Juice Products Association argues that under the Department's decision in *Fabricated Automotive Glass from Mexico*, (50 FR 1906, January 14, 1985), a domestic firm must be both an importer and related for it to be excluded. It is true that the domestic manufacturers which the Department excluded from the definition of the domestic industry in that case met both of the criteria for exclusion. However, the statute clearly states that related firms *or* importers may be excluded.

Procter & Gamble has argued that the decision to invoke the exclusion provision is uniquely within the province of the ITC. This interpretation is completely at odds with the applicable statutory language. The Department must determine when a case is brought "on behalf of an *industry*." Section 771(4)(B) provides that this term industry may be applied in appropriate circumstances by excluding related producers or importers." Moreover, the Court of International Trade has suggested that importers or related firms may be excluded "from the industry headcount" for standing purposes. *Gilmore*, 585 F. Supp., at 677 (dictum).

Procter & Gamble argues, in the alternative, that it would be inappropriate for the Department to apply the exclusion provision in this case because the ITC did not do so in its preliminary determination. We do not agree. The considerations which underlie the decisions of the Department and the ITC on whether to apply the exclusion provision, although perhaps related, are not the same. The ITC, we believe, must consider whether the inclusion of domestic firms which are related or are themselves importers might conceal the extent of injury to the domestic industry. *See e.g., Frozen Concentrated Orange Juice from Brazil*, Inv. No. 731-TA-326 (Preliminary), USITC Pub. 1873 at 9 (1986). The Department, on the other hand, must consider whether these domestic companies are so wed to allegedly dumped imports that their interests would run counter to the imposition of antidumping duties.

We have determined that it is appropriate in this case to exclude from the definition of the industry those firms whose imports of Brazilian FCOJ exceeded 50 percent of their total production. In different circumstances we may exclude firms whose imports are less than 50 percent of production. However, in this case it appears that significant levels of imports are more normal. Clearly, such firms have an overriding interest in avoiding the imposition of antidumping duties on dumped imports from Brazil. This leads to the exclusion from the definition of the domestic industry of six of the domestic processors opposing the investigation. (We note that a number of the processors opposing the investigation did not provide us with information as to whether they imported from Brazil, despite the fact that we requested such data in our standing questionnaire. Had this information been provided, it may have led to the exclusion of a greater number of companies from the definition of the domestic industry.) With the domestic industry so redefined, the remaining processors opposing the petition account for 38.64 percent of FCOJ production in the United States. Thus, the processors opposing the petition do not represent a major proportion of the domestic industry, as appropriately defined.

The petitioners in this case and the parties opposing the investigation have argued extensively over whether the industry on behalf of which the petition was brought includes orange growers as well as FCOJ processors. If growers are considered part of the industry, the degree of opposition to the case would be significantly diluted. Having found that the processors which oppose the case do not represent a majority of the processing sector, we need not address whether the industry should be defined for standing purposes to also include growers.

Scope of Investigation

The product covered by this investigation is frozen concentrated orange juice (FCOJ) in a highly concentrated form for transport and further processing, sometimes referred to as frozen concentrated orange juice for manufacturing, currently provided for under the Tariff Schedules of the United States (TSUS) item number 165.29.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with foreign market value as specified below.

We made comparisons on virtually all of the sales of the product during the period of investigation, November 1, 1985 through April 30, 1986.

United States Price

For Citrosuco, we based United States price on exporter's sales price (ESP) for those sales which were made after importation, in accordance with section 772(c) of the Act. For those sales to the United States which were made prior to importation, we determined that the merchandise had been purchased from the manufacturer or producer and, therefore, based United States price on purchase price in accordance with section 772(b) of the Act. These sales which we have treated as purchase price transactions involved a related U.S. sales agent. We used purchase price for those sales based on the following facts: (1) The related selling agent located in the United States acted only as a processor of sales related documentation establishing a communication link with the manufacturer with regard to those transactions. This arrangement represents a mere geographical relocation of a normal and routine selling function; (2) the related U.S. sales agent at no time maintained an inventory from which sales were made; and (3) all shipments of the merchandise were made directly from the manufacturer to unrelated U.S. buyers.

We calculated purchase price and ESP based on the packed, duty paid, f.o.b. or c.i.f., delivered prices to unrelated purchasers in the United States. We made deductions for foreign inland freight, foreign customs and wharfage fees, export taxes, ocean freight, marine insurance, and U.S. inspection fees. For ESP sales, we also deducted other expenses normally incurred in selling the merchandise in the United States.

For Cutrale, as provided in section 772(b) of the Act, we used the purchase price of the subject merchandise, since it was sold prior to the date of importation to unrelated purchasers in the United States. We calculated purchase price based on f.o.b., packed prices. We made deductions for foreign port charges, inland freight, and export taxes.

Section 772(d)(1)(C) of the Act requires that indirect taxes imposed upon home market merchandise that have not been collected on exported merchandise by reason of its exportation to the United States be added to the United States price to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation. Such a tax, the Tax on Circulation of Merchandise (ICM), is imposed on home market sales, but the rate of this tax varies with the destination of the merchandise in the home market. Therefore, no single tax rate can be applied as an addition to United States price. Because of this, for Cutrale, we deducted this tax as well as the Financial Social Tax from the home market prices in which they are included.

Foreign Market Value

As noted in the "Case History" section of this notice, petitioners alleged that third country sales were made at less than the cost of production and that constructed value should be used to compute foreign market value. Petitioners further alleged that sales in Brazil were inadequate for purposes of determining foreign market value and that third country sales should be examined.

We determined that Cutrale had an adequate number of home market sales for determining foreign market value. Petitioners' allegation that Cutrale's home market sales were below the cost of production was not received until September 19, 1986. While the cost of production information was received too late to be considered for the preliminary determination, the information has been considered for our final determination.

The constructed values and the costs of production were based on the respondents' submissions, adjusted, where appropriate.

For the first four months of the period of investigation, Brazil's economy was considered to be hyperinflationary. Effective March 1, 1986, the government of Brazil instituted controls which resulted in lower rates of inflation.

In calculating cost of production and constructed value, we used the nominal cruzeiro price of oranges and the related pick and haul labor expenses. This is because the price for these inputs remained fixed throughout the period. Thus, the orange price and the pick and haul labor in nominal cruzeiro terms represented the replacement price in each month.

Conversion costs were adjusted to reflect the effects of inflation by linking such costs with the Brazilian inflation index (ORTN). The total actual costs were allocated to the months using both the inflation index and production volume.

Pellets and other products manufactured from the orange rind were considered to be by-products of FCOJ production. Therefore, all costs incurred by the company for the manufacturing of these products were included in the costs of production. Revenues accruing from the sales of these products were credited against the costs.

Interest expense, offset by interest revenues accruing from investments for operations, was included. A deduction was made to adjust such expenses for the credit expenses included as part of selling expenses. Selling expenses related to the appropriate market, home or third country, were included.

The monetary correction to the balance sheet, per se, was not included as a cost of production of FCOJ. Since the Department used replacement value for its inputs, many of those cost adjustments captured by the monetary correction have been included. We have, however, included as a cost an amount reflecting the erosion of the value of the finished goods inventory and an adjustment to the financial expenses so that only the actual interest expenses have been included.

In all cases, general expenses exceeded the statutory minimum of ten percent of materials and fabrication. Therefore, actual general expenses were used. The statutory eight percent for profit was included because the department could not verify home market or third country profit. We added U.S. packing charges.

We compared Cutrale's home market prices to the cost of production in the same month. We used constructed value as the basis for calculating foreign market value since there were no sales of such or similar merchandise at prices above the cost of production, as defined in section 773(b) of the Act.

For Cutrale, we made a circumstance of sale adjustment for differences in credit expenses in accordance with § 353.15(b) of Commerce's regulations.

With regard to Citrosuco, we determined that all its sales to Canada were at prices above the cost of production. Therefore, in accordance with § 353.4 of our regulations, we used third country sales of identical merchandise to Canada.

We calculated a foreign market value for each month of the period of investigation and compared those sales to U.S. sales in the same month. We made deductions for foreign inland freight, foreign customs and wharfage fees, ocean freight, and marine insurance. We also deducted U.S. inland freight and U.S. inspection fees incurred on sales to Canada which were made through the Port of Wilmington, Delaware. We deducted third country packing costs and added U.S. packing costs. For ESP sales, we offset selling expenses incurred on third country sales up to the amount of the selling expenses incurred for sales in the U.S. market, in accordance with § 353.15(c) of our regulations.

Currency Conversion

For ESP comparisons, we used the official exchange rate for the date of sale since the use of that exchange rate is consistent with section 615 of the Trade and Tariff Act of 1984 (1984 Act). We followed section 615 of the 1984 Act rather than § 353.56(a)(2) of our regulations because the later law supersedes that section of the regulations.

For purchase price comparisons, we used the exchange rate described in § 353.56(a)(1) of our regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

As provided in section 776(a) of the Act, we verified all information provided by the respondents by using standard verification procedures, including on-site inspection of manufacturers' facilities, the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Petitioners' Comments

Petitioners' Comment 1: Petitioners argue that Citrosuco's foreign market value should be based on sales for export to West Germany rather than sales for export to Canada because (1) the FCOJ sold in the Canadian market does not meet the statutory requirement that it be "sold for export to" Canada, and (2) the FCOJ sold for export to West Germany is not so dissimilar to that sold in the United States that, despite the much larger size of that European market, only the product sold in Canada may be used for establishing the third country price. Moreover, if the Department elects to use sales to Canada as the basis for foreign market value, it may only use those sales which were verified as destined for Canada on the date of issuance of the export license.

DOC Position: We disagree. By examining Brazilian export licenses, we verified that Citrosuco's Canadian sales

were, in fact, sold for export to Canada. In accordance with section 353.5(c) of Commerce's regulations, we selected Canada rather than West Germany as the third country because the regulation states that, among the criteria for third country selection, preference should be given to the first criteria which is that the product exported to a country "has a greater degree of similarity to the product exported to the United States than does the product exported to other countries, provided the volume of sales to such country is deemed adequate." We found that the product sold to Canada was identical to that sold to the United States, while the product sold to West Germany was different from that sold to the United States, in terms of brix/acid ratio and other characteristics.

Furthermore, although sales to West Germany were more voluminous than those to Canada, we determined that the sales to Canada were adequate for comparison purposes.

Petitioners' Comment 2: Petitioners argue that the respondents have not demonstrated that the petitioners do not have standing to file the petition. They further argue that (1) past practice requires the Department to treat the petition as filed on behalf of an industry until there is reason to believe that a majority of the relevant domestic industry is opposed to the petition, (2) petitioners have standing as interested parties to file the petition, and (3) the petition was filed "on behalf of" an industry.

DOC Position: See section on "Standing Issue."

Petitioners' Comment 3: Petitioners argue that all of Citrosuco's sales to the United States should be treated as exporter's sales price transactions, whether sold through the Wilmington foreign trade zone or to Florida customers. Citing the Court of International Trade's decision in *P.Q. Corporation* v. *United States,* they state that even if sales were made prior to importation, this factor is not controlling because all of Citrosuco's sales to the United States were made by its U.S. affiliate, Juice Farms. Thus, an adjustment to United States price is required for the selling expenses incurred by Juice Farms.

DOC Position: We agree that those shipments through the Wilmington foreign trade zone are importations which were sold to unrelated purchasers after the date of importation and, therefore, are ESP sales. Sales to Florida customers, however, were made prior to importation in a manner that requires the use of purchase price for our comparisons. See section on "United States Price."

Petitioners' Comment 4: Petitioners argue that the Department must consider deliveries under any long-term contracts entered into before the period of investigation and made on the basis of futures prices. They argue that such contracts, with futures-based price provisions, do not constitute sales until the actual prices are set.

DOC Position: We disagree. These long-term contracts constituted binding commitments under which all key elements were firm. The price terms of these contracts, pegged to futures prices, were definite and determinable. To the extent that such contracts were entered into outside of the period of investigation, we have excluded deliveries under them from our calculation of foreign market value. *See, e.g., Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from France* (52 FR 812, January 9, 1987).

Petitioners' Comment 5: Petitioners state that the Department must make calculation corrections to Cutrale's home market credit expenses for the months of February and March 1986 (as noted in Cutrale's January 20, 1987 supplemental submission), because Cutrale's submission did not include a revised computer tape.

DOC Position: We agree and have corrected home market credit expenses to reflect the applicable circumstance of sale adjustment.

Petitioners' Comment 6: Petitioners question Cutrale's treatment of the date of issuance of the export license for U.S. sales as the date of sale. Petitioners argue that the Department's verification report does not prove that the issuance dates of CACEX export licenses necessarily represent the date of sale because (1) unless the license includes an agreement by the customer to purchase specific amounts for a specific price, it does not evidence all material elements of the contract, and (2) the additional export license issued when the quantity shipped exceeded the original export license implies that the quantity and/or price of the sale is not fixed as of the date of issuance of the export license.

DOC Position: We disagree. Verification indicated that the export license did indicate a specific amount at a specific price. When the shipment was made, however, the quantity was often slightly larger than the quantity called for in the original export license. Since, at the time of loading bulk shipments, the quantity loaded into the tanker sometimes exceeded the quantity specified in the original export license, an additional license and invoice covering the additional quantity was issued, at the same price, to cover the difference. Issuance of this additional license was treated as a new sale.

Petitioners' Comment 7: Petitioners question the adequacy of Cutrale's home market sales as providing a viable basis for foreign market value because certain reported sales may have been to employees, non-processor customer outlets, or other channels not in the normal course of trade.

DOC Position: We found that sales to employees were arms-length transactions which accounted for less than 0.5 percent of total home market sales. With regard to sales to non-processor customer outlets and others, the sales were found to be in the normal course of trade.

Petitioners' Comment 8: Petitioners contend that Cutrale's United States prices may have been overstated because of unreported shipment costs, some of which may have been borne by a related party.

DOC Position: We disagree. Our verification did not reveal a relationship between either Cutrale and its U.S. customers or the owners of the vessels which transported the FCOJ to the United States.

Petitioners' Comment 9: Petitioners claim that Cutrale did not report actual unit foreign inland freight.

DOC Position: Verification showed that Cutrale did not keep separate accounting records for its trucking division. Therefore, it reported freight rates that local commercial trucking companies would have charged Cutrale had those companies transported Cutrale's FCOJ during the period of investigation. The freight rates reported by the trucking companies were verified and Cutrale's allocation methods were considered reasonable.

Petitioners' Comment 10: Petitioners argue that unless the Department verifies that the export subsidy offset tax was actually paid on each shipment, it should deduct 3.5 percent of the gross unit price from United States price.

DOC Position: Verification showed that the respondents paid the 3.51 percent offset subsidy tax on each shipment.

Petitioners' Comment 11: Petitioners argue that the Department should treat respondents' production of pellets, d'Limonene and orange oil as co-products rather than by-products and, as a result, not reduce the cost of producing FCOJ by the net revenues from the sales of these products. In support of their argument, petitioners point to the fact that these products have separate production lines and are marketed through channels separate from FCOJ.

Moreover, citing the Department's finding in *Titanium Sponge from Japan* (49 FR 38687, October 1, 1984), they claim that these products do not meet our criteria for determining that a product is a by-product: (1) Manufacture in the same facility, (2) the quality and quantity of production are determined by production of the primary product, and (3) production is an unavoidable consequence of producing the primary article. Finally, the value of the secondary products relative to FCOJ is high.

DOC Position: We disagree. The "by-product" in question is primarily pellets for animal feed which is processed from the pulp and rind of the orange. The production of these pulp and rinds are an unavoidable consequence of the production of orange juice, the primary product. Cutrale and Citrosuco began business as orange juice producers and only began pellet production from the rinds and peels when it determined that a market existed for the pellets. The considerations enunciated in *Titanium Sponge* establish that the product in question was an intermediate product. The converse of these considerations as listed above are not criteria for establishing whether a product is a by-product or co-product.

Petitioners' Comment 12: Petitioners urge the Department to index the prices of the fruit, as the Department does with other costs.

DOC Position: The price of fruit remained fixed throughout the period of investigation. Therefore, this price represented the monthly replacement price for fruit. See "Foreign Market Value" section.

Petitioners' Comment 13: Petitioners argue that if the Department decides to treat pellets and other secondary products as by-products, then it should correct Cutrale's by-product revenue to reflect actual revenue received rather than the theoretical amount reported by Cutrale. With respect to Citrosuco, by-product revenue should not include revenues for pineapple or passion fruit juice.

DOC Position: We agree. The Department adjusted by-product revenues for Cutrale to reflect the actual amounts received. The Department did not consider other juices of Citrosuco to be "by-products" of FCOJ and, therefore, the costs incurred pertaining to these separate products were not included for FCOJ, nor were the revenues deducted as a credit to FCOJ costs.

Petitioners' Comment 14: Petitioners contend that if the Department decides not to index fruit costs, it should use actual cruzeiro outlays. Also, the Department should adjust direct and picking labor costs because such costs were affected by inflation during the period.

DOC Position: The Department adjusted the respondents' monthly costs to reflect actual cruzeiro outlays for fruit for the year. The picking labor cost remained fixed during the period of investigation and therefore was not adjusted by the inflation index. See "Foreign Market Value" section for direct labor included in conversion costs.

Petitioners' Comment 15: The petitioners argue that costs of maintaining inventory at the storage warehouses of Cutrale located at the ports exporting orange juice should be included in inventory storage costs and borne by the production of all orange juice, regardless of geographical market.

DOC Position: We disagree. These storage facilities exist only for the export market. All transfers and sales for the home market are made from the local production facilities. As home market sales do not use these export facilities, their costs have not been included in cost of production for home market, or in constructed value.

Petitioners' Comment 16: Petitioners contend that financial expense should not be offset by financial income which is not related directly to production.

DOC Position: We agree. Only financial revenues from the production of orange juice and the by-products were used to offset financial expenses.

Petitioners' Comment 17: The petitioners urge the Department to base Cutrale's general expenses on the cost of goods sold.

DOC Position: We agree. The general expenses more appropriately relate to the current sales, not production quantities. Therefore, we have reallocated Cutrale's general expenses based on cost of goods sold, as adjusted. See Cutrale Comment 2.

Petitioners' Comment 18: Petitioners state that the cost of maintaining the orange juice inventory at storage facilities must be borne by the production of all orange juice for Citrosuco regardless of geographical market.

DOC Position: We agree. Substantially all of Citrosuco's sales are for export. Also, since the cost of production is related to the Canadian sales, the costs appropriately include a proportion of these costs.

Petitioners' Comment 19: Petitioners argue that the cost of production should include the full monetary correction required by the Brazilian government.

DOC Position: We disagree. Many of the costs adjusted by the monetary correction have been captured through the use of current costs of the inputs. We have included, however, the costs associated with the erosion of the value of assets, in this case finished inventory, as an adjustment to the financial expenses so that only the actual interest expenses have been captured.

Petitioners' Comment 20: Petitioners claim that certain general and administrative expenses allocated to prior months by Citrosuco using the inflation index may have been adjusted twice for inflation because these costs were not year end costs.

DOC Position: We agree. The submitted costs were adjusted to reflect the actual amounts paid in the monthly cost calculated for the final determination.

Petitioners' Comment 21: Petitioners state that a portion of the general and administrative expenses incurred by the consolidated subsidiaries of Citrosuco should be allocated to the cost of producing FCOJ.

DOC Position: We disagree. Since the business of these subsidiaries is not related to the production of orange juice, we did not include such amounts.

Petitioners' Comment 22: Petitioners argue that some of Citrosuco's costs may have been allocated to alcohol production. Such allocation would be incorrect, in their view, since the Brazilian government may have absorbed those costs through subsidies.

DOC Position: All costs of alcohol production were included in total cost. Revenue from alcohol sales were deducted from costs. Therefore, the cost of production for orange juice could not have been diverted to alcohol production. Furthermore, we do not attempt to determine if subsidies exist in antidumping investigations.

Petitioners' Comment 23: Petitioners state that the Department did not verify that the price Cutrale pays itself for oranges is an arms-length price. If not, the price should be disregarded. Moreover, the Department did not verify the amount of income by Cutrale for sales of oranges by its related groves.

DOC Position: The price of oranges was negotiated and fixed by the Brazilian government throughout the harvesting and production season. This was the price paid for oranges purchased from related and from the unrelated growers. This "market value" was used in the calculation of the constructed value.

Respondents' Comments

Citrosuco Comment 1: Citrosuco argues that all its U.S. sales, whether to Florida or through the Wilmington,

Delaware, foreign trade zone, are purchase price transactions and that the Department erred in its preliminary determination when it considered those sales to be ESP transactions.

DOC Position: We agree that the sales to Florida are purchase price transactions. The sales through the Wilmington foreign trade zone, however, are ESP transactions. For purposes of the purchase price/ESP distinction, the merchandise was imported before it was sold, even though it was not entered into the customs territory of the United States. See also DOC Position to Petitioners' Comment 3.

Citrosuco Comment 2: Citrosuco argues that petitioners did not have standing to file the petition and that the Department should revoke its initiation of the investigation and terminate the case.

DOC Position: See section on "Standing Issue."

Citrosuco Comment 3: Citrosuco contends that the Department should not have included interest expense in its preliminary determination. This expense was an intra-company expense incurred in conjunction with loans from a Citrosuco subsidiary. Citrosuco further states that the company has a net financial income on a consolidated basis and should receive a cost credit equal to its net financial income.

DOC Position: We agree. The Department, for its final determination, used the consolidated financial expenses. Citrosuco has a net financial income resulting from current operations. Therefore, the net income was included as an offset to the costs.

Citrosuco Comment 4: Citrosuco argues that the Department should not include in cost of production or constructed value the costs of packing in drums for bulk sales because no such expenses are incurred on those sales.

DOC Position: We agree. Packing is not included in cost of bulk sales.

Citrosuco Comment 5: Citrosuco argues that the Department should base its cost of production on historical costs, i.e., actual cruzado costs booked in the month in which the cost was incurred. Indexing, or "ORTNizing," costs is unfair because the costs are being compared to U.S. dollar sales prices to Canada and the costs are converted to dollars on the date of the sale to Canada. The use of this exchange rate in and of itself adjusts for inflation, thereby accomplishing the same thing as indexing.

DOC Position: We disagree. The purpose of the ORTNizing is to allocate costs which fluctuate, on a per unit basis, month by month.

Citrosuco Comment 6: Citrosuco argues that if monetary correction is included as a cost the Department should be careful not to double count or to attribute incorrectly costs that are not relevant to FCOJ production, such as the monetary correction arising from its cattle ranch subsidiary. Moreover, if monetary correction is included, the cruzado value should be converted to dollars at the April 30, 1986 exchange rate, because it is a year end correction.

DOC Position: We agree. We have not included as a cost any of the monetary correction to the cattle ranch subsidiary. Instead we have calculated the current cost of producing FCOJ. Because we did not use monetary correction of the balance sheet, per se, the exchange rate issue is irrelevant.

Citrosuco Comment 7: Citrosuco contends that the Department has no authority to disregard below-cost sales during the period of investigation. In the preliminary determination, the Department found that all of Citrosuco's below cost sales occurred in two months of the investigative period. Below cost sales in these two months cannot, in Citrosuco's view, be considered to have been made over an extended period of time, in substantial quantities, and at prices which do not permit recovery of all costs within a reasonable period of time, as required by the statute. Alternatively, Citrosuco argues, the Department should not disregard below cost sales unless they exceed 50 percent. FCOJ qualifies as a seasonal product and as such is entitled to treatment under the Department's special cost rule developed in *Fresh Winter Vegetables from Mexico.*

DOC Position: In this final determination we have found that all Citrosuco s sales were above cost. Thus, it is not necessary to address these arguments.

Cutrale Comment 1: Cutrale argues that the Department should not deduct the value-added ICM tax on Cutrale's FCOJ exports because the ICM was paid into an escrow account. The ICM was paid into escrow because Cutrale and the state government of Sao Paulo are litigating whether ICM is legally incident on exports of FCOJ. If the Department decides to deduct the ICM on U.S. sales, Cutrale argues that the Department must be consistent by deducting ICM equally on home market sales to Manaus, a free trade zone. As in the case for ICM on exports, the question of the applicability of ICM on sales to Manaus is also in dispute between Cutrale and the government of Sao Paulo.

DOC Position: With regard to sales to the Brazilian free port of Manaus, we viewed these sales in the same manner as if they were sales for export and not subject to the ICM tax. Therefore, for this final determination, we deducted ICM from home market sales, except for those sales to Manaus, and made no deduction for ICM on sales to the United States.

Cutrale Comment 2: Cutrale argues that its general, selling and administrative expenses should be allocated on the basis of cost of goods produced rather than on the basis of cost of goods sold. This is because Cutrale's cost of goods sold in 1985–86 was low because: (1) Large inventories existed, (2) the value of inventories is artificially inflated, and (3) it is primarily a manufacturing rather than a selling company. For these reasons, allocation of general, selling and administrative expenses on the basis of goods produced would achieve a more accurate result.

DOC Position: We disagree. General, selling and administrative expenses are more closely related to sales than cost of production, since these costs were not directly incurred for the production of FCOJ but were incurred relative to the sales and the general operations of the company for a period of time. The submitted costs reported by Cutrale were allocated on the basis of the cost of goods sold. We adjusted the cost of goods sold since the value of the ending inventory is an integral component of the calculation of the cost of goods sold.

Cutrale Comment 3: If the Department does include some portion of the monetary correction as an element of cost, then Cutrale argues that it should not include that portion attributable to inventory costs. This is because including costs incurred in producing for inventory would contradict the Department's practice of comparing the price of the merchandise with the cost of producing that merchandise in the same month. Secondly, inventory appreciation should be excluded because generally accepted accounting principles require that when current costs or replacement costs are used, they must be offset by "income" generated by the appreciation of the inventory.

DOC Position: The Department included the erosion of the asset value for the inventories. Since the value of those inventories, measured in terms of replacement costs, did not increase at the same rate as inflation, the company experienced a "real" loss and only experienced a nominal gain on inventory, not a "real" profit. See "Foreign Market Value" section.

Cutrale Comment 4: Cutrale argues that the Department should use actual rather than imputed credit cost.

DOC Position: We disagree. The credit expense is considered a cost of the sale of the merchandise and, as such, is reflected in the prices in each market. Therefore, when the Department determines the cost of production related to the home market or the third country sales, this credit expense must be included. Likewise, when the constructed value is used as "foreign market value," credit expense must be included in the basis.

Respondents' Comment 1: Respondents contend that the Department should consider pellets and orange oil as by-products of the production of orange juice and deduct from the cost of production of FCOJ the revenue from the sales of these by-products.

DOC Position: We agree. See reply to Petitioners' Comment 11.

Respondents' Comment 2: Respondents contend that the Department should use the actual nominal costs incurred during a month to compare with sales during the month. If the Department does use the Brazilian index factor "ORTN" for production costs, fruit costs should not be included. Only costs which may be affected by inflation, such as fixed costs, should be indexed for inflation.

DOC Position: We agree that fruit costs should not be adjusted by ORTN. See "Foreign Market Value" section and Petitioners' Comment 12.

Respondents' Comment 3: Respondents argue that the Department should not include "monetary correction" as reported in the companies' financial statements as an element of cost. Thev contend that monetary correction is merely an amount necessary to enable the financial statements to balance after permanent assets and shareholders' equity accounts are adjusted for inflation. Instead of being a cost of production, monetary correction represents an allocation of profits to shareholders' equity.

In addition, by using replacement costs, the Department has already achieved much of what would be accomplished by including monetary correction as a cost. Any additional costs captured through inclusion of monetary correction, such as a "residual" cost of holding money, are not properly attributable to the costs under investigation.

DOC Position: The Department has not included the monetary correction of the balance sheet, per se, as a cost of production. Instead, we have calculated the current cost of producing FCOJ, thus obviating the need for including many of these cost adjustments made by the monetary correction. We have not included a cost of holding money because the companies under investigation routinely deposit their cash in overnight, interest bearing accounts. We have included as a cost, however, the erosion caused by inflation in the value of another current asset, finished goods inventory.

Procter & Gamble Comment: Procter & Gamble argues that if the dumping margin for either of the two respondents is found to be *de minimis*, the Department should not exclude that respondent's margin from the calculation of the weighted-average rate for all other companies.

DOC Position: In this final determination we have found that one company, Cutrale, has not been dumping. We presume that Procter & Gamble intends its argument regarding calculation of the 'all other' rate to apply to this situation as well.

We disagree with Procter & Gamble's argument. It has been our long-standing policy to base the dutv deposit rate for companies not investigated on the margin(s) applicable to companies covered by an affirmative determination. Manufacturers or exporters which have demonstrated, through verified information, that they do not sell at less than fair value, including those which have *de minimis* margins, are excluded from the determination. To the extent that other companies have behaved differently than the company or companies covered by an affirmative determination, this will be reflected in actual duty assessment.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of FCOJ from Brazil, except those from Cutrale, that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice. Cutrale is excluded from this determination.

Manufacturer/producer/ exporter	Margin percentage
Citrosuco Paulista, S.A.	1.96
Sucocitrico Cutrale, S.A.	[1] 0
All Others	1.96

[1] Excluded.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will make its determination whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days of publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on FCOJ entered, or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the United States price.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

March 9, 1987.

[FR Doc. 87-5619 Filed 3-16-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-606]

Certain Light-Walled Rectangular Welded Carbon Steel Pipes and Tubes From Taiwan: Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that certain light-walled rectangular welded carbon steel pipes and tubes (light-walled rectangular pipes and tubes) from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend the liquidation of all entries of light-walled rectangular pipes and tubes from Taiwan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margins as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make our final determination by May 26, 1987.

EFFECTIVE DATE: March 17, 1987.

FOR FURTHER INFORMATION CONTACT: Paul Tambakis or Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–4136 or 377–5288.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that light-walled rectangular pipes and tubes from Taiwan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(b)). The weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

On October 2, 1986, we received a petition filed in proper form from the individual producer members of the Mechanical Tubing Subcommittee of the Committee on Pipe and Tube Imports (CPTI) on behalf of the domestic manufacturers of light-walled rectangular pipes and tubes. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or threaten material injury to, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated such an investigation on October 22, 1986 (51 FR 37950, October 27, 1986), and notified the ITC of our action. On November 17, 1986, the ITC determined that there is reasonable indication that imports of light-walled rectangular pipes and tubes from Taiwan are materially injuring a U.S. industry (US ITC Pub. No. 1906).

On December 16, 1986, we presented an antidumping duty questionnaire to Yieh Hsing Enterprise Co., Ltd. and requested a response in 30 days. On January 15, 1987, respondent requested an extension of the due date for the questionnaire response. We granted the respondent a two-week extension. We received a response to the sales questionnaire on January 29, 1987. Between February 4 and 19, 1987, the Department requested supplemental information. Supplemental responses were received on February 11 and 27, 1987.

On December 17, 1986, petitioners alleged that third country sales of the products under investigation were made by Yieh Hsing at prices below its cost of production. We reviewed this allegation and found that a cost of production investigation was warranted. On January 16, 1987, we presenterd a cost of production questionnaire to counsel for Yieh Hsing.

Modifications to this questionnaire were presented to counsel for Yieh Hsing on January 29, 1987. Cost responses were received between January 29, 1987, and February 20, 1987.

Scope of Investigation

The products covered by this investigation are certain light-walled welded carbon steel pipes and tubes, of rectangular (including square) cross-section, having a wall thickness of less than 0.154 inch, as provided for in item 610.4928 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Fair Value Comparisons

We investigated sales of light-walled rectangular pipes and tubes to the United States during the period May 1 through October 31, 1986. Because Yieh Hsing accounted for over 70 percent of all sales of this merchandise from Taiwan, we limited our investigation to this company.

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value for the company under investigation using data provided in the responses.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent United States price since the merchandise was purchased by unrelated U.S. customers directly from the foreign manufacturer prior to importation. We calculated purchase price based on the packed, c. & f. or c.i.f. prices to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, brokerage and handling charges, bank charges, ocean freight and marine insurance. We made additions to purchase price for duty drawback (i.e., import duties which were rebated, or not collected, by reason of the exportation of the merchandise to the United States) pursuant to section 772(d)(1)(B) of the Act.

Foreign Market Value

In accordance with section 773(e) of the Act, we calculated foreign market value based on constructed value. Since Yieh Hsing had no viable home market, in accordance with section 773(a)(1)(B) of the Act and § 353.5 of our regulations respondent reported sales to its largest third country market as the basis for foreign market value. The petitioners alleged that these third country sales were at prices below the cost of producing the merchandise. We examined production costs which included all appropriate costs for materials, fabrication and general expenses. Since we found there were insufficient sales above the cost of production, as defined in section 773(b) of the Act, we used constructed value as the basis for calculating foreign market value.

In accordance with section 773(e) of the Act, the constructed value included the material and fabrication expenses incurred to produce the product sold in the U.S. market. Since the general expenses were greater than the statutory minimum of 10 percent, we used actual general expenses of the company. Because actual profit was less then eight percent, the statutory minimum profit of eight percent was added. We also added the cost of U.S. packing. We made an adjustment to constructed value for differences between unrelated commissions paid in the two markets in accordance with § 353.15(b) of our regulations.

The calculation of constructed value was based on the respondent's submission. This information was adjusted by: (1) Including the duty paid on imported raw materials, which is

rebated upon exportation; and (2) increasing the interest expense reported in the response to reflect the percentage of interest expense to the cost of sales, as shown on the financial statements.

Currency Conversion

We made currency conversions from new Taiwan dollars to U.S. dollars in accordance with § 353.56(a) of our regulations, using the certified daily exchange rates furnished by the Federal Reserve Bank of New York.

Verification

We will verify all information used in making our final determination in accordance with section 776(a) of the Act. We will use standard verification procedures, including examination of relevant sales and financial records of the company under investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of light-walled rectangular pipes and tubes from Taiwan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until further notice.

	Margin percentage
Manufacturer/producer/exporter:	
Yieh Hsing Enterprise Co., Ltd ...	10.58
All others	10.58

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a United States industry, before the later of 120 days after our preliminary affirmative determination or 45 days after our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on April 13, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by April 6, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination, or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

March 11, 1987.

[FR Doc. 87-5743 Filed 3-16-87; 8:45 am]

BILLING CODE 3510-05-M

Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee will be held April 1, 1987, 9:30 a.m., in the Herbert C. Hoover Building, Room 4830, 14th Street & Constitution Avenue, NW., Washington, DC. The Licensing Procedures and Regulations Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

Open Session

1. Opening Remarks by the Chairman.

2. Presentation of papers or comments by the public.

3. Review status of CCL 1565A rewrite.

4. Review status of G-CEU.

5. Review status of G-CG.

6. Discussion of definition of parts and components.

7. Review of draft of Export Licensing forms.

8. Proposal by OBM to charge for license applications.

9. Extension of G-COM into and across COCOM countries.

10. New Business.

Executive Session

4. Discussion of matters properly classified under Executive order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552(c)(1) and are properly classified under Executive Order 12356. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202/377-4127. For further information or copies of the minutes, call Betty Ferrell at 202/377-2583.

Dated: March 11, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 87-5664 Filed 3-16-87; 8:45 am]

BILLING CODE 3510-DT-M

President's Export Council, Foreign Trade Practices and Negotiations Subcommittee Meeting; Closed Meeting

A meeting of the President's Export Council Foreign Trade Practices and Negotiations Subcommittee will be held April 2, 1987, 2:00 p.m.–4:00 p.m. in Room 4830 of the Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC. The Subcommittee's purpose is to advise the President on matters relating to foreign trade practices and trade negotiations.

Agenda: Opening remarks, presentations and discussion on the new trade round and causes of the trade deficit.

A Notice of Determination to close meeting or portions of meetings of the Council to the public on the basis of 5 U.S.C. 552b (c) (1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377–4217.

For further information, or copies of the minutes, contact Sylvia Lino (202) 377–1125.

Dated: March 12, 1987.

Wendy H. Smith,

Director, President's Export Council.

[FR Doc. 87–5742 Filed 3–16–87; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee; Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. I, section 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Agricultural Advisory Committee will conduct a public meeting in the Fifth Floor Hearing Room at the Commission's Washington, D.C. headquarters located at Room 532, 2033 K Street, NW., Washington, DC 20581, on March 30, 1987, beginning at 9:00 a.m. and lasting until 3:30 p.m. The agenda will consist of:

Agenda

1. Discussion of proposed rule amendments to speculative limits for agricultural futures contacts
2. Status report on hedging definition
3. Report on the National Cattlemen's Association Task Force studying cattle futures trading;
4. Update on current agricultural issues before the Commission, including:
   - Commission review of Chicago Mercantile Exchange emergency action in pork belly futures;
   - CFTC "special call" for information on traders in livestock contracts;
   - status report, Commission liaison on USDA and General Accounting Office projects;
   - proposed rule changes in daily price limits for grains futures contracts;
   - agricultural options update; and
   - high fructose corn syrup futures contract.
5. Discussion of recent Office of General Counsel interpretations concerning minimum price guarantee contracts
6. Update on audit trail and financial rules
7. Discussion of other issues for potential Committee consideration; timing of next meeting; other Committee business

The purpose of this meeting is to solicit the views of the Committee on the above-listed agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on agricultural issues. The purposes and objectives of the Advisory Committee are more fully set forth in the June 4, 1985 first renewal charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Kalo A. Hineman, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission, Agricultural Advisory Committee c/o Charles O. Conrad, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Mr. Conrad in writing at the latter address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC on March 12, 1987.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 87–5710 Filed 3–16–87; 8:45 am]

BILLING CODE 6351-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of information collection.

SUMMARY: The Commodity Futures Trading Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.

ADDRESS: Persons wishing to comment on this information collection should contact Robert Neal, Office of Management and Budget, Room 3235, NEOB, Washington, DC 20503, (202) 395–7231. Copies of the submission are available from Joseph G. Salazar, Agency Clearance Officer, 2033 K Street, NW., Washington, DC 20581 (202) 254–9735.

Title: Leverage Survey.

Control Number: Unassigned.

Action: New Information Collection Request.

Respondents: Businesses or other for-profit.

Estimated annual burden: 30 hours.

Estimated number of respondents: 120.

Issued in Washington, DC on March 11, 1987.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–5665 Filed 3–16–87; 8:45 am]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Proposed Collection of Information; Information Collection Associated With Procurement of Goods and Services

AGENCY: Consumer Product Safety Commission

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. 3501–3520), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval of extension through April 30, 1990, of currently approved collections of information contained in forms, contracts, and other documents required for, or related to, the procurement of goods and personal services for the agency.

The information obtained from these collections of information is used by the Commission for evaluation of proposals, prices, and contractor capabilities to perform work required by specific solicitations.

Additional Details About the Collections of Information:

Agency Address: Consumer Product Safety Commission, 5401 Westbard Avenue, Bethesda, Maryland 20207.

Title of Information Collections: Information Collection Associated With Procurement of Goods and Services.

Type of Request: Approval of existing requirements.

Frequency of Collection: Varies depending upon frequency of agency procurements of goods and personal services.

General Description of Respondents: Persons responding to solicitations to provide goods or personal services to the Commission.

Estimated Number of Respondents: 3000.

Estimated Average Number of Hours Per Response: 3 hours

Comments: Comments on this request for approval of collections of information should be addressed to Marina Gatti, Desk Officer, Office of Management and Budget, Washington, DC 20503, telephone: (202) 395–7340, and to the agency. Copies of the request for approval of collections of information are available from Francine shacter, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492–6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

March 12, 1987.

[FR Doc. 87–5735 Filed 3–16–87; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accorance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of committee: Army Science Board (ASB).

Date of Meeting: 8 April 1987.

Time: 1300–1700 hours.

Place: Holiday Inn, Alexandria, VA.

Agenda: The Army Science Board's Ad Hoc Subgroup on the Chief of Staff's Task Force on Soldiers and Families will meet with the General Officer Steering Committee for the semi-annual review of the Army Family Action Plan. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87–5668 Filed 3–16–87; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

[CFDA 84, 159A]

Notice Inviting Applications for New Awards Under the Handicapped Special Studies Program for Fiscal Year 1987.

Purpose: To support the collection of data, studies, investigations, and evaluations to assess the impact and effectiveness of programs assisted under the Education of the Handicapped Act, and to provide Congress and others with this information.

Deadline for transmittal of applications: May 4, 1987.

Deadline for Intergovernmental Review Comments: July 8, 1987.

Applications Available: Mar. 24, 1987.

Estimated Range of Awards: $50,000–$150,000.

Estimated Average Size of Awards: 100,000.

Estimated Number of Awards: 8.

Project Period: up to 18 months.

Applicable Regulations: (a) The Handicapped Special Studies Program Regulations, 34 CFR Part 327, (b) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79, and (c) The Notice of Final Annual Evaluation Priority published in this issue of the **Federal Register.**

For Applications or Information Contact: Susan Sanchez, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3094—M/S 2313), Washington, DC 20202. Telephone: (202) 732–1117.

Program Authority: 20 U.S.C. 1418.

Dated: March 12, 1987.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 87–5715 Filed 3–16–87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP87–223–000 et al.]

Natural Gas Certificate Filings; K N Energy, Inc., et al.

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP87–223–000]

March 6, 1987.

Take notice that on February 27, 1987, K N Energy, Inc. (Applicant), P.O. Box 15265, Lakewood, Colorado, 80215, filed in Docket No. CP87–223–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate sales taps for the delivery of gas to end users under the certificates issued in Docket Nos. CP83–140–000, CP83–140–001, and CP83–140–002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes the operation of sales taps to various end users located along its jursidictional pipelines. Applicant states that Sunflower Pipeline Company, whose intrastate facilities were recently acquired by Applicant, has served the end users as described on Exhibit A of Applicant's request, and that all required facilities are in place. Further, Applicant states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on Applicant's peak day and annual deliveries.

Comment date: April 20, 1987, in accordance with Standard Paragraph G at the end of this notice.

2. Mid Louisiana Gas Company

[Docket No. CP87–219–000]

March 6, 1987.

Take notice that on February 27, 1987, Mid Louisiana Gas Company (Mid-La), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP87–219–000 an application pursuant to section 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain existing compressor facilities in its DeSaird Compressor Station and to install and operate a replacement compressor units, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Mid-La requests the Commission permit it to abandon seven compressor units having a total of 8,625 horsepower located in its DeSaird Compressor Station in Ouachita Parish, Louisiana, and authorize the installation and operation of four replacement units having a total of 4,800 horsepower. Mid-La's DeSaird Compressor Station compresses gas that is gathered from the Monroe Field at field line pressures ranging from 10 psig to 275 psig into the northern terminus of its transmission system, it is stated. Mid-La further states that abandonment is preferable and more economical than the continued repair of these obsolete compressors as they have been in continuous service since 1926 and 1935. Small replacement parts are unavailable and are fabricated in the station machine shop while large major castings are impossible to repair or replace, it is stated. Further, Mid-La states the compressors are inefficient due to wear and outmoded design resulting in excessive fuel usage. Mid-La alleges the proposed modernization will not diminish or impair service to any of its customers as the DeSaird Compressor Station will have essentially the same capacity, deliverability and flexibility as the original facilities.

Mid-La proposes to purchase three of the new compressors for a total cost of $1,048,000 and to lease the fourth unit at an annual rental of $90,150. Mid-La estimates installation costs of these units to be $273,000.

Comment date: March 20, 1987, in accordance with standard Paragraph F at the end of this notice.

3. Mississippi River Transmission Corporation

[Docket No. CP84-523-001]

March 9, 1987.

Take notice that on February 17, 1987, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP84-523-001 a petition to amend the order issued October 31, 1984, in Docket No. CP84-523-000 pursuant to section 7(c) of the Natural Gas Act issuing a certificate of public convenience and necessity so as to authorize the construction and operation of minor appurtenant facilities to connect a storage field well with MRT's West Line facilities in Lincoln Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MRT proposes to construct and operate minor appurtenant facilities to connect an existing storage field well designated the Harris Green S-26 Well (S-26), authorized by Commission Order issued October 31, 1984, to MRT's West Line facilities. MRT states that S-26 was completed in a storage zone of tight sand density with low porosity and permeability and is unsuitable for normal injection/withdrawal service. MRT states that withdrawal capabilities will be enhanced, however, if the well is connected to its lower pressure mainline system rather than its storage field gathering system as originally proposed and approved by the Commission. MRT further states that the proposed facilities would maximize the withdrawal capabilities of S-26, but would not alter the total storage capacity of the field. It is stated that MRT estimates the total cost of the proposed facilities to be $129,150.

Comment date: March 13, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Southern Natural Gas Company; Southern Natural Gas Company, South Georgia Natural Gas Company

[Docket No. CP87-207-000 and Docket Nos. CP87-208-000, CP87-209-000]

March 9, 1987.

Take notice that on February 17, 1987, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP87-207-000 and Southern and South Georgia Natural Gas Company (South Georgia) P.O. Box 1279, Thomasville, Georgia 31792, filed in Docket Nos. CP87-208-000, and CP87-209-000 applications pursuant to section 7(c) of the Natural Gas Act for limited-term certificates of public convenience and necessity authorizing the transportation of up to 24.45 billion Btu equivalent of natural gas per day for six end-users in Alabama and Georgia, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Southern and South Georgia propose to transport gas on behalf of the customers and in accordance with the following details:

TRANSPORTATION DETAILS

Southern Natural Gas Company		Agent	Billion Btu equivalent/day	Redelivery point
Docket No.	Customer			
CP87-207-000	Alabaster Water and Gas Board	None	2.6	Shelby County, Alabama.
	City of Lafayette, Alabama	None	1.6	Chambers County, Alabama.
	Utilities Board of the City of Pleasant Grove	None	9.9	Jefferson County, Alabama.
	Union Springs Utility Board	None	1 75	Macon County, Alabama.

TRANSPORTATION DETAILS

Southern Natural Gas Company, South Georgia Natural Gas Company		Agent	Billion Btu equivalent/day	Redelivery/point
Doocket No.	Customer			
CP87-208-000	Great Southern Paper Company, a Division of Natural Gas Great Northern Nekoosa Company Corporation (GSP).	South Georgia Natural Gas Company.	6.0	Lee County, Alabama;[1] Early County, Georgia.[2]
CP87-209-000	Americus Utility Commission (Americus).	South Georgia Natural Gas Company.	2.6	Lee County, Alabama, Georgia.[3]

[1] Redelivery point by Southern to South Georgia.
[2] Redelivery point by South Georgia to GSP.
[3] Redelivery point by South Georgia to Americus.

Southern proposes to transport the gas on an interruptible basis for a term expiring October 31, 1988. It is stated that the end-users would purchase the gas from SNG Trading, Inc. Southern states that it would receive the gas at various existing points on Southern's system in Mississippi and onshore and offshore Louisiana. It is further stated that Southern would redeliver equivalent volumes of gas, less 3.25 percent for compressor fuel and company-use gas, at existing delivery points in Alabama to the end-users in Docket No. CP87-207-000 and to South Georgia in Docket Nos. CP87-208-000 and CP87-209-000. It is explained in Docket Nos. CP87-208-000 and CP87-

209–000 that South Georgia would redeliver to GSP and to Americus equivalent volumes less 0.5 percent of the volumes transported for fuel use.

In Docket No. CP87–207–000 Southern proposes to charge the four customers a transportation rate of 64.9 cents per MMBtu of gas redelivery by Southern. In Docket Nos. CP87–208–000 and CP87–209–000 it is stated that Southern would change South Georgia the following transportation rates:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to South Georgia under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to South Georgia do not exceed the daily Contract Demand of South Georgia, the transportation rate would be 39.9 cents per MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to South Georgia under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to South Georgia, exceed the daily Contract Demand of South Georgia, the transportation rate for the excess volumes would be 64.9 cents per MMBtu.

In Docket No. CP87–208–000 it is indicated that GSP would pay South Georgia each month a transportation rate of 49.88 cents per MMBtu redelivered by South Georgia and would reimburse South Georgia for all transportation and fuel charges and other costs South Georgia pays Southern pursuant to the agreement between Southern and South Georgia.

In Docket No. CP87–209–000 it is indicated that Americus would pay South Georgia each month a transportation rate of 101.02 cents per MMBtu redelivered by South Georgia and reimburse South Georgia for all transportation and fuel charges and other costs South Georgia pays Southern pursuant to the agreement between Southern and South Georgia.

It is asserted that the transportation agreements all provide for collection of the GRI surcharge of 1.52 cents per Mcf. It is further asserted that Southern would receive take-or-pay credit for all volumes of gas transported by Southern.

Comment date: March 31, 1987, in accordance with Standard Paragraph F at the end of this notice.

Southern Natural Gas Company

[Docket No. CP87–227–000]

March 9, 1987.

Take notice that on March 3, 1987, Southern Natural Gas Company (Southern), filed in Docket No. CP87–227–000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing transportation of natural gas for Chattanooga Gas Company, Division of Jupiter Industries, Inc. (Chattanooga), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern requests a limited-term certificate of public convenience and necessity authorizing it to transport gas on behalf of Chattanooga, acting as agent in arranging for the transportation of natural gas supplies for the Oil and Gas Division of North American Royalties, Inc., on behalf of the Wheland Foundry Division (NAR), in accordance with the terms and conditions of a transportation agreement between Chattanooga and Southern dated February 6, 1987. Southern states that it has been advised that NAR has entered into gas sales contracts to purchase natural gas from Entrade Corporation and SNG Trading Inc. in order to serve the natural gas requirements of its plant in Chattanooga, Tennessee. Southern also states that in order to effectuate delivery of the gas purchased, NAR has entered into an agreement with Chattanooga dated November 24, 1986, wherein Chattanooga has agreed to transport through its facilities the gas purchased by NAR to its plant, and in conjunction therewith, to obtain as agent for NAR the transportation of said gas through Southern's pipeline system.

Southern indicates that subject to the receipt of all necessary governmental authorizations, Southern has agreed to transport on an interruptible basis up to 2.6 billion Btu of natural gas equivalent per day purchased by NAR. Southern requests that the Commission issue a limited-term certificate with pregranted abandonment for a term expiring October 31, 1988.

The agreement provides that Chattanooga will cause gas to be delivered to Southern for transportation at various existing points of delivery on Southern's contiguous pipeline system as specified in Exhibit A to the agreement, it is stated. It is stated that Southern would redeliver to Chattanooga at the Chattanooga Gas Company Meter Station located in Hamilton County, Tennessee, an equivalent quantity of gas less 3.25 percent of such amount which shall be deemed to have been used as compressor fuel and company-use gas (including system unaccounted-for gas losses); less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas; and less Chattanooga's pro-rata share of any gas delivered for Chattanooga's account which is lost or vented for any reason.

Southern states that Chattanooga has agreed to pay Southern each month, the following transportation rates:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to Chattanooga under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to Chattanooga do not exceed the daily contract demand of Chattanooga, the transportation rate shall be 48.2 cents per million Btu of natural gas; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to Chattanooga under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to Chattanooga exceed the daily contract demand of Chattanooga, the transportation rate for the excess volumes shall be 77.6 cents per million Btu of natural gas; and

Southern states that the transportation arrangement would enable NAR to diversify its natural gas supply sources and to obtain gas at competitive prices. In addition, Southern indicates that it would obtain take-or-pay relief gas that NAR may obtain from its suppliers.

Comment date: March 31, 1987, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to

intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commisison by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to §157.205 of the Regulations under the Natural Gas Act (18 CFR 157–205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–5683 Filed 3–16–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF87–266–000, et al.]

Lakeview Power Co., et al., Small Power Production and Cogeneration Facilities; Qualifying Status, Certificate Applications, etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Lakeview Power Co.

[Docket No. QF87–266–000]

March 3, 1987.

On February 17, 1987, Lakeview Power Company (Applicant), of 42410 Marks Ridge Road, Sweet Home, Oregon 97386, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Lakeview, Oregon. The facility will consist of an extraction/condensing steam turbine-generator and a heat recovery steam generator. Steam extracted from the turbine will be used for drying lumber in kilns by two local sawmills. The primary energy source will be wood wastes. The net electric power production capacity of the facility will be 13.85 MW. Installation of the facility is expected to begin in June 1987.

2. County of Jackson, MI

[Docket No. QF87–267–000]

March 3, 1987.

On February 17, 1987, County of Jackson, Michigan (Applicant), of Jackson County Tower Building, 120 W. Michigan Avenue, Jackson, Michigan 49201, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Jackson County, Michigan. The facility will consist of two (2) water wall steam generators and one (1) extraction/condensing turbine-generator set. The net electric power production capacity will be 30 megawatts. The primary energy source will be biomass in the form of municipal solid waste. Natural gas will be used for start-up and shut-down, and flame stabilization. Construction and installation of the facility began on July 2, 1986.

3. GENTEX/TSG Joint Venture

[Docket No. QF87–254–000]

March 3, 1987.

On February 11, 1987, GENTEX/TSG Joint Venture (Applicant), of P.O. Box 460547, Houston, Texas 77056–8547, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed Bayport topping-cycle cogeneration facility will be located in Bayport, Harris County, Texas. The facility will consist of two combustion turbine generators, two heat recovery steam generators and one automatic extraction/condensing steam turbine generator. The steam recovered from the facility will be sold for use in process application. The electric power production capacity of the facility will be approximately 82.5 MW. The primary energy source will be natural gas. The installation of the facility is expected to commence on July 1, 1987.

4. Decker Energy International, Inc.

[Docket No. QF87–277–000]

March 6, 1987.

On February 24, 1987, Decker Energy International, Inc. (Applicant), of 1099 W. Morse Boulevard, Winter Park, Florida 32789 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Grayling, Michigan. The facility will consist of a combustion turbine generator, a heat recovery steam generator and an extraction/condensing steam turbine generator. The steam extracted will be utilized for process by various industrial users. The primary energy source of the facility will be natural gas, with No. 2 fuel oil used as backup. The maximum electric power production capacity of the facility will be 29,400 kW. Start-up of the facility is expected to occur in the first quarter of 1989.

Standard Paragraphs

E. Any person desiring to be heard to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-5716 Filed 3-16-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP87-210-000]

Natural Gas Pipeline Company of America; Application

March 3, 1987.

Take notice that on February 17, 1987, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP87-210-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing: (1) Firm transportation for Coastal States Gas Transmission Company (Coastal) of a daily quantity of natural gas equal to 17.60 billion Btu equivalent, (2) interruptible transportation for each million Btu equivalent of overrun gas accepted by Applicant for transportation to Coastal, (3) interruptible transportation for Coastal, of a daily quantity of natural gas up to the difference between 17.60 billion equivalent and the actual firm volumes transported as described above and (4) construction and operation of certain minor facilities at the proposed delivery point required for such transportation service, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant, it is stated, has been informed by Coastal that such gas would be for ultimate delivery to Certinteed Corporation (Certinteed), an end user, for use at its new cogeneration plant in Wichita Falls, Texas. Applicant states that such gas would be used to: (1) Generate steam in the manufacture of plastics and (2) fuel turbines to generate electricity which would be sold to Texas Utilities Electric Company. Applicant requests authority to provide such service for Coastal for a period of twelve years from the date of first receipt of gas by Applicant and year-to-year thereafter. Applicant indicates it would provide such service pursuant to the terms and conditions contained in an agreement between Applicant and Coastal dated November 10, 1986.

Applicant proposes to receive natural gas for the account of Coastal at an existing point of interconnection between the measurement facilities of Applicant and the pipeline facilities of Mustang Fuel Corporation (Mustang) located in Washita County, Oklahoma (Mustang receipt point), for transportation and redelivery to a proposed point of interconnection between the pipeline facilities of Lone Star Gas Company (Lone Star) and the proposed tap and measurement facilities to be located in Stephens County, Oklahoma (Lone Star delivery point).

In addition to the demand quantity, Applicant requests authority to accept on an interruptible basis, overrun gas at the Mustang receipt point for transportation to the proposed Lone Star delivery point.

Applicant also requests authority such that if on any given day, Coastal is unable to make available the full demand quantity to Applicant at the Mustang receipt point, Coastal may then make available for tranportation up to the difference between the demand quantity and the actual volumes delivered by Coastal for firm transportation at the Mustang receipt point, to Applicant on an interruptible basis at any of the following receipt points: (1) An existing point of interconnection between the measurement facilities of ANR Pipeline Company (ANR) and the pipeline facilities of Applicant located in Beaver County, Oklahoma (ANR-Beaver receipt point); (2) an existing point of interconnection between the measurement facilities of Colorado Interstate Gas Company (CIG) and the pipeline facilities of Applicant located in Beaver County, Oklahoma (CIG-Beaver receipt point); and (3) an existing point of interconnection between the measurement facilities of Applicant and the pipeline facilities of ANR located in Hansford County, Texas (ANR-Hansford receipt point), for transportation and redelivery to the Lone Star delivery point for Coastal's account.

Applicant proposes to reduce the volumes of natural gas it redelivers for the account of Coastal by certain percentages for gas lost and unaccounted for gas used as fuel and gas used in day to day pipeline operations as provided for in the agreement.

Applicant further proposes to charge Coastal and Coastal has agreed to pay Applicant monthly for the service provided herein a transportation demand charge equal to fifty-eight and forty-three hundredth cents times 17.60 billion Btu equivalent per day, the daily demand quantity, plus a commodity charge of one and fifty-eight hundredths cents times the actual volumes, less any overrun gas received by Applicant at the Mustang receipt point. Applicant states that such demand charge would become effective on the later of June 1, 1987, or the date Applicant receives and accepts the permanent certificate of public convenience and necessity as requested in the application to transport natural gas for Coastal and when the required facilities on Applicant's system become operational.

Should Coastal actually deliver natural gas in excess of the then-effective demand quantity (overrun gas) to the Mustang receipt point, Coastal has agreed to pay Applicant monthly in conjunction with the payment as described above, a charge for such overrun gas equal to three and five-tenths cents per million Btu equivalent, it is stated.

Applicant also states that should Coastal be unable to tender the full demand quantity to Applicant on any given day at the Mustang receipt point, Coastal may tender such gas on an interruptible basis, up to the difference between the demand quantity and the actual volumes to be delivered at the Mustang receipt point, to Applicant at the ANR and CIG Beaver receipt points and the ANR-Hansford receipt point for redelivery by Applicant to the Lone Star delivery point. It is indicated that the charges for interruptible service are in addition to the demand and commodity rates as set out previously. Applicant indicates that should such interruptible transportation be necessary, it would charge Coastal transportation rates as follows:

Point of receipt	Point of delivery	Transportation rate (million Btu)
Beaver Co., OK (ANR).	Stephens Co., OK (Lone Star).	11.6 cents.
Beaver Co., OK (CIG).	Stephens Co., OK (Lone Star).	11.6 cents.
Hansford Co., TX (ANR).	Stephens Co., OK (Lone Star).	10.0 cents.

Applicant also proposes to charge Coastal the currently effective Gas Research Institute surcharge as set forth on Sheet No. 5A of Applicant's Volume No. 1 Tariff, if applicable.

Applicant proposes to construct, own and operate a 6-inch tap connection and to construct and operate a 6-inch measurement facility at the Lone Star delivery point in Stephens County, Oklahoma. Applicant estimates the cost of the tap connection and meter facilities at $13,500 and $61,500 respectively. It is indicated that Coastal would reimburse Applicant for the cost of the proposed tap connection.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 24, 1987, file with the Federal Energy Regulatory Commission, Washington,

DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-5681 Filed 3-16-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-1-001]

Oglethorpe Power Corp.; Filing

March 10, 1987.

Take notice that on February 26, 1987, Oglethorpe Power Corporation (Oglethorpe) tendered for filing a Motion to Terminate Proceedings pursuant to Rule 212 of the Commission's Rule of Practice and Procedure (18 CFR 385.212).

Oglethorpe states that this enforcement proceeding was initiated by a complaint filed by Greensboro Lumber Company on October 5, 1984, and no significant action has been taken.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 23, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this petition are on file with the commission and are available for public inspection.

Kennth F. Plumb,

Secretary.

[FR Doc. 87-5684 Filed 3-16-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-97-001]

Pacific Gas and Electric Co.; Order Accepting Experimental Rates for Filing Without Suspension or Hearing, Noting Interventions, Denying Motion, Granting and Denying Waivers, and Ordering Summary Judgment

Issued March 12, 1987.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Introduction and Background

In this docket the Commission is asked to accept experimental rates for filing in the Western Systems Power Pool (WSPP or Pool) in order to determine whether generation and transmission facilities in certain western states can be used more efficiently in an environment of broader information exchange and more flexible pricing,[1] where energy service and transmission access are provided on a voluntary basis. We shall accept the proposed experimental rates for filing, as modified.[2] We believe that the experimental rates are just and reasonable and comply with the underlying goals of the Federal Power Act (FPA): to bring about the lowest cost to consumers in the long run and to ensure efficiency in the electric utility industry. *NAACP v. F.P.C.*, 520 F.2d 432, 440 (D.C. Cir. 1975), *aff'd*, 425 U.S. 662 (1976).

The Commission welcomes and encourages this experiment in bulk power marketing. Wholesale electricity markets are becoming more competitive due to economic and technological changes. *See Public Service Company of New Mexico, et al.*, Opinion No. 203, "Opinion and Order Finding Experimental Rate to be Just and Reasonable and Accepting Rate for Filing." 25 FERC ¶ 61,469 at 62,034-62,036 (1983) (Opinion No. 203), *reh. denied*, 27 FERC ¶ 61,154 (1984) (Opinion No. 203-A); and FERC, *Power Pooling in the United States* (1981) at 66-68. Utilities are now vying against each other for sales to other utilities and to large customers. Independent generators are entering bulk power markets at both large and small scales. Distributors and large industrial customers are actively searching for new lower cost suppliers. In light of these developments, we are interested in evaluating how the Commission's regulation of the electric utility industry may be reformed to rely, to a greater extent, on market forces, consistent with the provision of reliable electric service. See Notice of Inquiry, "Regulation of Electricity Sales-for Resale and Transmission Service", Docket No. RM85-17-000 (Phase I), 50 FR 23,445 (1985), FERC Statutes and Regulations ¶ 35,518 (1985) (NOI) which was issued by the Commission to gather information to be used to evaluate its policies toward wholesale electricity transactions and transmission service.[3]

Experiments can provide us with valuable experience to guide our judgments in regulating the electric utility industry. For that reason, the Commission authorized a bulk power marketing experiment in Opinion No. 203 three years ago. In Opinion No. 203, the Commission authorized the operation of the Southwest Bulk Power Market Experiment (Southwest Experiment) "to learn more about the interplay between competition and operating, planning and contractual considerations. That knowledge cannot be acquired, at least initially, through hearings." Opinion No. 203-A, 27 FERC at 61,284 (footnote omitted). There, as here, the Commission was using an experiment as a tool to learn whether bulk power markets would perform more efficiently if competitive forces were given more latitude.

The results of the Southwest Experiment's first year were somewhat mixed. With regard to competition, the results were positive. The Rand Corporation found that "the market had become more competitive" after the participating utilities "had been granted substantial freedom in setting prices." *See* J. Acton and S. Besen, *Regulation,*

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[1] *See* Letter dated November 7, 1986 to the Commission accompanying Western Systems Power Pool Filing for Experimental Rates, (WSPP Letter) at 4.

[2] *See* discussion of amended filing in text accompanying note 12, *infra.*

[3] The Commission stated in the NOI that "where electricity markets are competitive, utilities and their customers can benefit from the flexibility to respond to market forces." 50 FR at 23,445, FERC Statutes and Regulations at 32,628.

Efficiency, and Competition in the Exchange of Electricity: First Year Results From the FERC Bulk Power Marketing Experiment (October 1985), (*1985 Rand Report*) at 108–109. On the other hand, the effect of the experiment on efficiency was more ambiguous.[4] The Southwest Experiment, however, was only a first step. We knew this even when we accepted the experimental rates in that proceeding and, therefore, encouraged staff and jurisdictional utilities to continue exploring the potential for experiments in other regions of the country. 25 FERC at 62,032. The WSPP filing is a product of this continued effort.

The WSPP not only complements our objectives expressed in the NOI and the Southwest Experiment, but also provides an actual market test of the ideas discussed in the NOI, and is further reaching than the Southwest Experiment. The Southwest Experiment tested only a small submarket. The WSPP Experiment would involve an entire region. The WSPP Experiment involves utilities in ten states. It would directly affect over 11 million customers. Approximately 12 percent (82,000 MW) of the total electric generating capacity of the United States would be involved in the Experiment. Unlike the Southwest Experiment, the WSPP Agreement provides for transmission service on a voluntary basis, rather than on a mandatory basis. Thus, the WSPP would provide a "real world" test of one of the fundamental questions posed in the NOI: whether mandatory transmission access is a prerequisite to a competitive market. In conjunction with voluntary access to transmission service, the WSPP would apply a much greater range of flexible prices to more energy commodities than in the Southwest Experiment, and also would apply the same flexibility to transmission service. Through its electronic bulletin board, the WSPP would implement greater information exchange than the Southwest Experiment. Although the Participants proposed different revenue treatments for the WSPP than the Southwest Experiment, we will apply similar revenue treatments here as were applied in the Southwest Experiment. Finally, the WSPP would use different methods to evaulate the Experiment than did the Southwest Experiment. *See* Attachment, *Comparison of the WSPP Proposal and the Southwest Experiment.*

We are interested in this Experiment only if it can help the Commission meet its "overriding objective in administering the Federal Power Act: to achieve the most efficient allocation of resources possible." *Northern Natural Co. v. F.P.C.*, 399 F.2d 953, 959 (D.C. Cir. 1968). We believe this Experiment can assist the Commission in meeting this objective. The Experiment will also be valuable to the Commission because it will explore theories and examine treatments beyond those tested in the Southwest Experiment and provide the Commission with significant data on the Experiment's effect on efficiency, competition and coordination in the bulk power industry. In fact, we expect that the primary benefit of this Experiment will be the ability to use the information gained from the Experiment as one of the resources in the Commission's ongoing review of electric regulatory policies and, thereby, ultimately to help ensure the lowest rates possible for electric consumers.

Description of WSPP

On November 12, 1986, as completed on February 4, 1987,[5] PGandE submitted the WSPP Agreement for filing on behalf of itself and eight jurisdictional investor-owned utilities: Arizona Public Service Company (APS), El Paso Electric Company (EPE), Nevada Power Company (NP), Pacific Power and Light Company (Pacific), Portland General Electric Company (PGE), Public Service Company of New Mexico (PNN), San Diego Gas and Electric Company (SDG&E), and Southern California Edison Company (SCE); the Bonneville Power Administration (BPA); and the following entities which are non-jurisdictional but will also participate in the WSPP Experiment: Arizona Electric Power Cooperative, Inc. (AEP), Northern California Power Agency (NCPA), Sacramento Municipal Utility District (SMUD), Salt River Project (SRP), and the Department of Water Resources of the State of California (CDWR) (collectively referred to as Participants or Applicants). According to the Participants, the WSPP would allow a broader range of coordination type transactions than those possible under existing agreements, and because of the Pool's flexible pricing and broader coordination, more efficient use of transmission may also result. WSPP Letter at 7.[6]

The proposed WSPP would be a voluntary agreement that applies to coordination transactions only, that is limited to two years in duration, and that would become effective on February 1, 1987, unless the Commission specifies otherwise and the Participants agree. No transactions would commence until the Commission has accepted the filing. Substantive provisions of the Agreement include the following:

(1) Flexible pricing would apply to the marketing of three energy commodities: economy energy, unit commitment and firm system capacity and/or energy sale or exchange transactions; and to the marketing of transmission services;

(2) The flexible prices would be subject to certain ceilings: (a) the ceilings for the energy commodities' transactions would be based on costs associated with the highest fully allocated cost resource among Participants during the prior year; and (b) the ceiling for transmission service would be 33 percent of the difference between the highest and lowest decremental cost of generation among Participants during the prior year. There would also be a floor of 1 mill per kilowatthour for transmission service reservation;

(3) Each energy commodity and the transmission service would be treated similarly with regard to scheduling and delivery; *i.e.*, one Participant may schedule energy or transmission service with another Participant by mutual agreement, "provided that each party shall be the sole judge as to the extent to and the conditions under which it is willing to provide or receive such service hereunder consistent with statutory requirements and contractual commitments." Service Schedules A–3.1, B–3.1, C–3.1, and D–3.1;

(4) Membership would be open to any utility interconnected with a Participant which owns or has entitlement to generation facilities and which operates its own control area or has appropriate arrangements with its control area operator;

(5) The WSPP would utilize an "electronic bulletin board" *i.e.*, a central Hub computer to facilitate the daily exchange of buy and sell quotes among Participants;

(6) A committee drawn from a diverse mix of Participants (public and investor-owned utilities, and state and federal agencies) would prepare for the Commission an interim and a final

[4] The Rand Report describes the results of the efficiency analysis as presenting "a decidedly mixed picture that varies depending on the analytic technique selected and the case being analyzed." *1985 Rand Report* at 97. Using a more sophisticated technique for the two most realistic cases, Rand finds that "the experiment increase[d] the likelihood of potential gains [to trade] being realized at the margin." *1985 Rand Report* at 98.

[5] Pacific Gas and Electric Company (PGandE) was advised that its original submittal in Docket No. ER87–97–000 was deficient by letter dated January 15, 1987 from the Commission's Director of the Division of Electric Power Application Review.

[6] The rate schedule herein is designated as the Western Systems Power Pool Experimental Tariff.

report on the results of the WSPP Experiment. The interim and final reports would include quantitative and qualitative analyses. In order to measure the effects on efficiency and competition, information on a number of variables would be collected and analyzed across time, including the volume of Participants' quotes and bids to the Hub computer as well as actual transaction prices and volumes. Participants would also provide qualitative assessments of the market context and changes in efficiency and competition, including the incremental volume of transactions made possible solely by the WSPP. The analyses performed with this information would be directed toward answering key policy questions relating to efficiency, competition, and distribution of benefits; and

(7) No existing agreements would be replaced or superceded as a result of the WSPP. Instead, the WSPP Agreement would provide another contractual option whereby the Participants could benefit from other trade opportunities to capture additional economies.

The Participants also requested waivers of certain of the Commission's regulations to allow the following actions: (a) that the WSPP Agreement be accepted as an initial filing under the FPA; (b) that application of FERC Order No. 84 [7] be suspended for transactions made pursuant to this experiment; (c) that all other regulations relating to supplemental filing requirements with respect to transactions under the WSPP Agreement be suspended; (d) that the notice of termination be preaccepted, subject to the terms of the WSPP Agreement, and that the 120-day notice requirement be waived; (e) that the submission of a filling fee not be required for this filing, nor for any future filing necessary to add new participants; (f) that any and all other necessary waivers for the filing to be accepted be granted; and (g) that the jurisdictional utilities be allowed the option of not including any consideration of WSPP transactions in future test year period filings for ratemaking purposes covering the period of February 1, 1987 through January 31, 1989, but that if Participants choose this option, they describe any method they propose to use to pass on to their customers any incremental benefits from WSPP transactions. Costs and revenues for WSPP transactions would be treated under existing retail and wholesale rate mechanisms for those jurisdictional Participants who do not utilize this option.[8]

Comments to Original Filing

Notice of the original filing was published in the **Federal Register**,[9] with comments due on or before December 1, 1986. The Public Service Commission of Nevada and the California Public Utilities Commission (CPUC) submitted notices of intervention. Motions to intervene were filed by NSPA and BPA. While supporting the WSPP, the CPUC favors the collection of information developed in cooperation with the respective state commissions on the efficiency, the benefits of each transaction, and the consequent effect on ratepayers. Neither BPA nor NCPA raise any specific issues in their pleadings. A motion to intervene was also filed on December 4, 1986 by the Nevada Attorney General's Office of Advocate for customers of Public Utilities which concurs with and supports the filing.

On December 11, 1986, the American Public Power Association (APPA) filed a motion to intervene. APPA states that it represents the interests of many public power systems throughout the country which may be affected by the Experiment that, therefore, there is good cause to grant its intervention.

APPA requests that the Commission not grant the requested waivers and not allow the Agreement to take effect without modification and a hearing to determine which modifications are necessary. APPA opposes both the Agreement's failure to provide open transmission access, and the proposed flexible transmission pricing mechanism. APPA urges the Commission to condition approval of the Agreement on the Applicants' agreement to provide transmission service subject to their own transmission requirements on a first-come-first-served basis, at cost-based rates set in advance. APPA asserts that the Applicants have submitted no information to show that assured transmission access at a reasonable, defined cost is not a prerequisite for a viable competitive market to exist. According to APPA, there can be no assurance that the rates charged under the Agreement will be reasonable, without reasonable assurance of a competitive market to control prices. APPA adds that the Applicants have not shown that the sellers will not retain a disproportionate share of benefits which may result from Pool transactions.

Other arguments raised by APPA include: (1) the filing is not an initial rate filing because the Agreement apparently effects a change in current rates and services among the Applicants; (2) the criteria for Pool membership is too vague, the exclusion from Pool membership of utilities without a control or ownership interest is anticompetitive, and the utilities' operation of a control area or "appropriate contractual arrangement for operations within a control area" may be an inappropriate requirement for membership; (3) the Applicants should clarify their intentions concerning the distribution of benefits realized under the Agreement, and flow through to ratepayers any benefits realized by increased competition; (4) the proposed flexible rates should be capped based on a reasonable sharing of Pool benefits by the sellers and buyers; (5) the Applicants should clarify how losses will be determined and charged, and how to value an exchange of service made instead of payment; and (6) the Applicants should identify non-participants or the amount of coordination transactions currently between Participants and non-participants.

On December 19, 1987, the Public Service Commission of Nevada submitted an affidavit and a resolution of the Regional Committee in Electrical Power Cooperation supporting the WSPP Experiment.

[7] Order No. 84, "Filing of Rate Schedules; Regulations Limiting Percentage Adders in Electric Rates for Transmission Service," 45 F.R. 31,294 (1980), FERC Statutes and Regulations ¶ 30,153 (1980). Order No. 84 requires that utilities limit percentage adders applied to third-party purchase power costs.

[8] With respect to BPA's rates, the Participants note in Tab 9 of the filing that BPA will begin WSPP transactions by using its existing 1985 wholesale power and transactions by using its existing 1985 wholesale power and transmission rate schedules adopted by the BPA Administrator pursuant to section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Electric Power Planning and Conservation Act (Northwest Power Act), and approved by the Commission on an interim basis pursuant to section 7(i)(6). *See* U.S. Department of Energy, Bonneville Power Administration, 31 FERC ¶ 61,388 (1985) and 35 FERC ¶ 61,143 (1986). The Participants cite § 13.2 of the WSPP Agreement which provides that it does not restrict BPS's authority to adopt new rates for application under the WSPP Agreement and obtain interim or final approval for those rates from the Commission. The Participants add that:

If BPA, in its sole discretion, later proposes to adopt other rates for pool transactions (including, but not limited for pool transactions (including, but not limited to WSPP Agreement Service Schedules A, B, C, or D), that proposal will be subjected to BPA proceedings specified by Northwest Power Act, Section 7(i) and then submitted to the Commission for interim or final confirmation and approval, pursuant to sections 7(a)(2) or 7(k) of the Northwest Power Act.

The Commission finds this provision reasonable and in compliance with BPA's responsibilities under appliable law.

[9] 51 FR 42,001 (1986). Notice of the amended filing was also published in the **ederal Register** with comments due on or before February 25, 1987. 52 FR 5,276 (1987).

On December 24, 1986, PGandE filed a motion for an extension of time until January 6, 1987 in which to respond to APPA's motion to intervene. PG and E's motion was granted by notice dated December 29, 1986. On January 13, 1987, Citizens Energy Corporation (CEC) submitted a motion to intervene which raises no specific arguments. CEC states, however, that it is exploring additional involvement in bulk electric power and coordination within the WSPP area and will require access to energy resources, transmission, and information, all of which may most readily be available through the WSPP.

Motions to intervene and answers in opposition to the position of the CPUC were filed on December 22, 1986, by PNM; on December 29, 1986, by APS, SCE and PGE; and on January 6, 7, 8, 9, and 16, 1987, by Pacific, PGandE, SMUD, NP, and SDG&E, respectively. The Participants argue that the CPUC's request seeks highly proprietary and competitively sensitive data which many Pool members are not willing to disclose, and that a number of WSPP Participants could withdraw from the Pool if CPUC's recommendation is adopted. APS and SCE note that the CPUC is already empowered to collect these data from utilities subject to its jurisdiction. APS adds that to require all regulated utilities to adhere to the CPUC's request is overbearing and unauthorized; moreover, the data could be evaluated at length without meaningful results. SDG&E states that the reporting system proposed in WSPP will provide valuable information about how the Pool affects transactions, and is not unduly burdensome to WSPP members. On March 6, 1987, BPA submitted a letter in which it stated that, to ease the Commission's concerns about data reporting, BPA would be willing to provide data on costs associated with each offer to buy and to sell, and the incremental variable operating costs of each Participant before, during and after the Experiment. BPA adds that this letter reflects only its own position and not that of other WSPP Participants.

On December 22, 1986, and on January 6 and 7, 1987, the Commission received responses in opposition to APPA's motion to intervene from PGandE, NP, PNM, BPA, SCE, APS, Pacific, SDG&E, and NCPA. NP, PNM and SDG&E did not offer any substantive comments.

PGandE notes that the heterogeneity of WSPP provides an inherent safeguard of competitive public interests, and that, based on the Southwest Experiment, latitude in pricing services appears not to present a danger of monopolistic pricing. PGandE adds that any modifications of the WSPP package are likely to upset the balance of interests that fostered this experiment. PGandE states that the WSPP Agreement would not alter any existing agreements among the various Participants but would test if market pricing can alleviate physical constraints and encourage economic efficiency. PGandE argues that WSPP is a balanced package that is not easily segregable into component parts.

With regard to APPA's specific questions, PGandE notes that the WSPP does not reserve any part of the profits to the utilities' shareholders as was done in the Southwest Experiment; rather, the costs and revenues for WSPP transactions will be treated under existing rate mechanisms. PGandE adds that it is because of the experimental nature of the WSPP that the parties have reserved the option of not including any consideration of WSPP transactions in future test year period filings for ratemaking purposes. Moreover, according to PGandE, any option proposed by the jurisdictional Participants is subject to the scrutiny of the Commission and challenges of any aggrieved party in individual rate cases. PGandE also states that the WSPP Experiment should not provide any precedential value. With regard to membership in WSPP, PGandE notes that all utilities in the West may join the Pool, assuming they meet the limited eligibility requirements. Finally, PGandE states that the Commission has established authority to allow experiments and should approve this proposal to test how, if at all, it should regulate the nation's electric utility industry differently than under current procedures.

In addition to, and in support of, comments from PGandE, NCPA states that all Pool transactions are voluntary and that any distribution of benefits from WSPP transactions should be deferred to subsequent rate cases.

BPA stresses that the WSPP is a data gathering exercise for which there are no *a priori* answers. Instead, Participants only request the Commission to accept the agreement for filing without ordering a hearing during the two-year experimental period. BPA notes that APPA's questions cannot be answered on the basis of a hearing or investigation before the Pool experiment begins; rather, the sophisticated reporting system utilized by the Pool will provide many answers to those questions. BPA also states that Opinion No. 203 should not be read as a delineation of the only circumstances under which experimentation will be permitted. With regard to membership, BPA says that the "control area" requirement is necessary because it would be physically impossible for a member to arrange pool transactions without suitable control arrangements. BPA also notes that there is no point in providing membership to utilities who are total requirements wholesale customers because they do not buy and sell bulk power on a short-term basis and this Experiment will be only two years long. Moreover, according to BPA, no nongenerating utility has sought membership in the Pool. BPA says that no one expects the Pool to cause a radical departure from current pricing in the two-year period. Rather, the benefits lie in the greater use of transmission facilities and elimination of regulatory delay and uncerainty associated with filing new rates for each transaction by jurisdictional Pool members. BPA also believes that the impacts on non-participants will be nominal.

APS believes that flexible pricing for transmission services will create a "spot market." Thus, transmission service could be tailored to the transaction, even on an hourly basis. As a result, according to APS, the transmission systems of the WSPP Participants will be more fully utilized, economy and bulk power transactions which are not now possible will be made, and the cost to the Participants' customers will be reduced.

SCE states that APPA has no direct interest in this proceeding because it neither sells nor buys power, that several of APPA's members who do have a direct interest in the Experiment are signatories to the WSPP Agreement and approve of it, that APPA's claim of harm resulting from the Agreement's departure from long-standing principles is completely speculative, and that APPA's concern disregards the limited experimental nature of the filing.[10] SCE stresses that any change in Commission policy will not result from acceptance of this filing, but from the data collected during the Experiment and analyzed by the Commission, and the conclusions ultimately derived from the Experiment. SCE asserts that it is in subsequent filings that APPA and its members should raise any concerns. SCE also notes that, with the exception of the request that jurisdictional Participants

[10] SCE urges the Commission not to grant APPA's motion to intervene because APPA knew of the importance of the filing well before the close of the initial comment period. However, because the filing in this docket has been amended and a new notice has been issued that specifies a comment date of February 25, 1987, the APPA motion to intervene is timely. *See* Discussion in Part III, *infra*.

have the option of not including WSPP transactions in certain future filings, all of the waivers sought here were approved in the Southwest Experiment.

SCE also states that, contrary to APPA's allegations, Opinion No. 203 did not limit the form of power marketing arrangements allowable for experimental purposes. It should be clear that the Experiment by its very nature attempts uncertain, but promising, new marketing methods, according to SCE. SCE reiterates arguments that the Experiment would test more efficient alternative means of using existing transmission capacity, and that APPA has not shown that WSPP Participants could extract monopoly profits or unreasonable prices as a result of the Experiment. With regard to the membership requirement, SCE stresses that only "undue discrimination" for potential members must be avoided, and that the criteria for WSPP membership would not exclude entities who were "similarly situated" to others in the Pool. In support of accepting the WSPP application as an initial rate, SCE notes that the WSPP rate would not supersede any existing rate schedules and that there is adequate precedent for the Commission's acceptance of pooling arrangements as initial rate schedules.

On January 8, 1987, NCPA filed a response to SCE's answer to APPA's motion to intervene. NCPA believes that SCE inappropriately reargues elements of the issues in *Pacific Gas and Electric Company*, Docket No. E-7777 (Phase II), which is pending before the Commission. NCPA believes that these issues should be decided in Docket No. E-7777, not here. In conclusion, NCPA requests that the Commission ignore the inappropriate arguments raised by SCE in this docket but permit the WSPP Experiment to proceed.[11]

On January 15, 1987, the Director of the Commission's Division of Electric Power Application Review sent a deficiency letter to PGandE. The letter requested further information on provisions concerning the competitive effects of voluntary transmission service and on the data and methods used to analyze the data in the proposed WSPP reporting system.[12]

[11] SCE's arguments in this proceeding have not prejudged our review in Docket No. E-7777. Our decision herein is based on the facts of this case and addresses the issues as they relate to these facts.

[12] The letter terminated Subdocket -000 in Docket No. ER87-97 and provided that a new subdocket would be assigned in Docket No. ER87-97 upon the receipt of the requested information.

WSPP Amended Filing

On February 13, 1987, PGandE submitted a timely amendment to its original filing in response to the Commission's deficiency letter of January 15, 1987. (WSPP amended filing.) PGandE states that the Experimental rates would provide pricing flexibility to encourage and increase efficient exchagne of capacity and energy among the Participants. According to PGandE, the transmission systems are now constrained in that, at times, sufficient transmission for all potential transactions is not available and economically efficient transactions are not being made. Also, fixed cost transmission rates do not provide adequate incentives for utilities to make available transmission capacity which they use to serve their customers.

Following is a summary of the questions posed by the Commission in our deficiency letter and PGandE's answers to those questions.

Q. (1) Address, in detail, the provision in Service Schedule D of the WSPP Agreement whereby a Party to the Agreement "shall be the sole judge as to the extent to and the conditions under which it is willing to provide or receive" transmission service. In particular, discuss the following matters:

(a) Explain why the experimental rates, as proposed, are likely to result in a competitive market.

A. PGandE states that the WSPP rates in Schedule D were designed to increase the number of transmission transactions in the region to lower overall production costs. The Participants believe the coordination market is sufficiently open so that each of them will benefit from the flexible prices in Schedule D. The reasons for this, according to PGandE, are because all Participants in the WSPP, except NCPA, are interconnected with more than one utility, all current transmission and power contracts will remain in force during the Experiment, and access to non-WSPP services will not change.

PGandE states that the Participants are not presenting a unified position regarding competition nor are they representing that the WSPP will guarantee a competitive market. Rather, the WSPP is a good faith proposal to increase competition and opportunities for power transactions, according to PGandE.

Q. (1) (b) Describe how the provisions regarding transmission service (access and pricing) will prevent the exercise of any potential monopoly power over transmission service by Participants.

A. PGandE states that the object of the Experiment is to see if price flexibility will increase efficiency. Efficiency will have increased if no party is harmed and some parties are benefitted. According to PGandE, no party should be harmed by the Experiment because it is voluntary, and no party is compelled to engage in a transaction if it will not benefit the party. PGandE also states that "monopoly power" is simply not an issue that can or should be resolved in this proceeding. Instead, PGandE states that the Experiment should increase power transactions to the benefit of those involved and should provide useful data to judge the utility market under different pricing conditions. PGandE says that the opportunity for abuse, if any, will be slight because: (1) the parties, by voluntary participation in the Experiment, have made a commitment to try to increase coordination arrangements; (2) the negotiation process should limit excessive price demand, where more than one Participant will be able to provide transmission service; (3) the one Participant which has only one interconnection (NCPA) will suffer no detriment from the Experiment; (4) the Experiment will have a pre-set and short duration; and (5) the reporting procedures, the wide range of Participants, and exposure of the results of the WSPP and comments on these results to Commission and public scrutiny provide safeguards against abuse.

Q. (1) (c) Describe how reliance on the voluntary provision of transmission service will affect Participants (and their customers) whose only interconnection is with one other Participant.

A. NCPA is the only Participant which is interconnected with only one other Participant—PGandE. NCPA and PGandE have operated under an Interconnection Agreement since 1983. In addition, they have executed a separate Bilateral Agreement in connection with the creation of the WSPP which provides that: (1) current long-term firm transmission services will not be affected by the WSPP but will continue to be available to NCPA pursuant to the Interconnection Agreement, (2) interruptible service will continue to be available at cost of service rates and under the terms of the Interconnection Agreement, and (3) short-term firm transmission service will be unaffected by the WSPP and will continue to be available pursuant to the Interconnection Agreement. According to PGandE, both NCPA and PGandE have agreed that participation in the WSPP will not degrade current service to NCPA, and additional market

information and incentives available under the Experiment may create new opportunities for NCPA. Finally, PGandE states that customers of the Participants should also benefit from the incremental efficiency and economy permitted by the Experiment.

Q. (2) Describe what safeguards are contained in your proposal or what additional conditions, if any, are necessary to address any potential monopoly over transmission service. Please explain how the experiment as proposed would have to be modified to reflect any additional conditions.

A. PGandE reiterates that the potential of monopoly power should not be determined in this proceeding nor are additional modifications needed to address potential monopoly power over transmission. PGandE states that the Participants are satisfied that their interests are adequately protected under the terms of the Agreement.

Q. (3) Discuss whether the interim and final reports of the experiment would provide more useful and credible evaluation with the use of an outside consultant(s) that either prepares or critiques the report.

A. PGandE states that the Participants do not believe that an outside consultant to prepare or critique the report will add significantly to the usefulness or credibility of the report because the Report Committee consists of a cross-section of entities and disciplines to ensure objectivity. Also, the Participant have historically taken adversarial positions on a variety of issues, and are both net purchasers and sellers of service. This, according to PGandE, will discourage self-serving analyses. PGandE adds that the WSPP provides for dissenting views. Also, the Participants invite a FERC Staff member to participate in the Experiment and to serve as a non-voting member of the Report Committee to ensure objectivity.

Q. (4) Discuss whether the data and the methods that will be used to analyze that data will allow for an evaluation of the competitive relationship between buyers and sellers in each of the four services in the Experiment.

A. PGandE says that the WSPP data collection and calculation methods were designed to evaluate the competitive relationships of buyers and sellers regarding the services under the Experiment. PGandE reiterates the objectives of the WSPP Reporting System cited in the original filing, and lists trends and correlations to be evaluated by the Report Committee for the Services during the term of the Experiment. These include the volume of buy and sell quotes by Participants over time, relationship of price to volume measures, relationship between market concentration and average monthly buying/selling price, average price as a function of the seller's market share, level of sales attributable to the WSPP, volume of sales by Participants over time, and monthly average sell price by member, region, WSPP over time. Again, PGandE says that a FERC staff member is welcome to participate in the data collection and analysis functions as an ex officio member of the Report Committee.

Q. (5) Explain how the reporting system will be structured to provide reliable and consistent estimates of "percent of sales attributable to WSPP" (Service Schedules A through D).

A. PGandE says that the Report and Operating Committee are preparing a detailed description of the criteria to use for data to be recorded for "Sales to Each Member" and "Percent of Sales Attributable to WSPP". Data entered under "Sales to Each Member" will include prescheduled WSPP sales which were made from HUB information; and data from "Percent of Sales Attributable to WSPP" will meet the criteria that, without the WSPP, access to the buyer and knowledge of the particular sale opportunity would not have occurred, and that no agreement for similar service exists with that member.

With regard to the suggestion that a consultant be engaged to ensure consistency, PGandE states that the Report and Operating Committees have developed standards to ensure the use of a consistent methodology in data collection. PGandE adds that the Participants would accept the requirement that WSPP hire a consultant to perform an independent review to ensure consistency in methodology for estimating the percent of sales attributable to this experiment, so long as the cost for the consultant was no more than $30,000.

Finally, PGandE asks for expedited treatment by the Commission respecting this filing.

Comments to WSPP Amended Filing

On February 25, 1987, in response to the WSPP amended filing of February 13, 1987, the Electricity Consumers Resource Council (ELCON) submitted a timely motion to intervene (ELCON response to WSPP amended filing), and APPA submitted a timely supplement to its motion to intervene (APPA response to WSPP amended filing). ELCON concurs in the concerns about the Experiment expressed by APPA in its motion to intervene. In this regard, ELCON requests that the Commission condition approval of the WSPP on the Participants' agreement to provide open transmission service in order to prevent an abuse of monopoly power. ELCON adds that significant modification of the proposal is required, and favors an expedited procedure to set out better the ground rules for the Experiment.

APPA reiterates its request that the Commission reject the Agreement or modify the Experiment following an investigation and hearing to ensure that the rates are just and reasonable, that monopoly power over transmission will not be abused, that federal antitrust laws will be promoted, and that the experiment will yield meaningful data.

APPA argues that the amended filing remains deficient because the Participants will make no concessions to ensure a competitive market or protect against potential abuses of monopoly power, or provide crucial cost and other information which will allow the Commission to assess after-the-fact, whether the proposed rates have resulted in a reasonable sharing of benefits. APPA says that the Commission may foster greater transmission access by conditioning approval of any requests for regulatory waivers and pricing discretion upon voluntary commitments to transmit at rates which will not result in monopoly prices.

APPA says that without knowledge of certain costs, there will be no way to evaluate whether a reasonable sharing has occurred. In addition, there is no support for the claim that transmission capacity is constrained under the current circumstances.

In response to the question about whether the proposed rates are likely to result in a competitive market, APPA says that the Participants can give no assurances of competition. APPA adds that entities without transmission access will have no choice but to agree to a monopoly price, the acceptance of which will not lead to meaningful long-term efficiencies. APPA states that the Participants have not demonstrated the availability of meaningful transmission alternatives to many entities, and that citing to existing rate schedules without the knowledge of the scope and actual use of those schedules is not helpful.

In response to the question concerning provisions in the Agreement which will prevent the exercise of monopoly power, APPA questions why the Participants have given no reasons for their adamant opposition to adding protections against monopoly abuse. APPA also notes deficiencies in the reporting requirements and the resulting inability to be able to evaluate the extent to

which monopoly power has been abused.

In response to the question regarding NCPA's interconnection only with PGandE, APPA says that NCPA has no safeguards which would control the price that PGandE would charge to NCPA if PGandE chose to give it additional transmission service.

In response to the question regarding the use of an independent consultant, APPA notes that, contrary to the Participants' response, outside evaluation would be more meaningful than a negotiated report.

With regard to the discussion of the data and methods to be used to evaluate competitive relationships between buyers and sellers, APPA states that the absence of cost information for all transactions is crucial because the Commission will not know if a reasonable sharing of benefits has occurred. APPA also requests that the following requirements be addressed: (a) information necessary for the Commission to compare competition and efficiency in the WSPP area with that in other regions where there is no transmission price flexibility; and (b) a data base of past experience which will enable the Commission to measure the impact of the Experiment on competition. Further, APPA said that, if the Agreement is not conditioned on transmission access commitments, the Participants should provide information on instances where transmission has been refused and instances where an intervening utility has sold the power or energy rather than provide transmission service to facilitate a purchase from a third party.

In response to the question regarding the mechanisms for providing reliable and consistent estimates of trades attributable to the Experiment, APPA says that data are needed both on past transactions and on transactions by Participants outside the WSPP. APPA stresses the need for information regarding the increase in transactions under existing rate mechanisms when there exist more market information and transaction facilitation mechanisms such as those that exist in other markets.

APPA reiterates the need for information about nonparticipating and nonqualified entities in the region, and the way costs and profits from the Experiment will or will not be passed through to customers. APPA further requests the identification of all of the Participants' existing rate schedules, the capacity limitations on economy transactions that would exist during the Experiment, and the steps currently being taken to relieve inadequacies with the use of price flexibility.

On March 6, 1987, PGandE and SCE submitted timely answers to APPA's response to the WSPP amended filing. PGandE denies APPA's claims and urges the Commission to allow the WSPP Agreement to take effect promptly and without modification. SCE adds that APPA's response is an attempt to convert the WSPP Experiment into another exhaustive and unnecessary antitrust-type proceeding. SCE notes that neither APPA's and ELCON's motions add anything to APPA's initial motion and supplemental filing.

Discussion

I. The Commission's Interest in this Experiment

The Commission has a continuing obligation to examine its rules and policies to ensure that they are in harmony with its statutory mandates. The WSPP filing could potentially provide us with useful information relating to three of our statutory goals: increasing efficiency, promoting competition and promoting coordination.

A. Efficiency

"A major purpose of the whole [Federal Power] Act is to protect power consumers against excessive prices." [13] We serve this purpose by complying with the "legislative command" to establish "just and reasonable" rates and thus "allow only such rates as will prevent consumers from being charged any unnecessary or illegal" costs. *NAACP v. FPC*, 520 F.2d 432, 440 (D.C. Cir. 1975), *aff'd.*, 425 U.S. 662 (1976). This is effectively a mandate to bring about the production of electricity "at the lowest possible cost to the consumer in the long run—in the economist's terms, to insure the efficient performance of an industry." *NAACP v. FPC*, 425 U.S. 662, 666 (1976). Our mandate to protect consumers from "unnecessary" costs motivates us to provide utilities with strong incentives and opportunities to keep costs to a minimum.

Efficiency in electricity supply is multi-dimensional. It is the result of many operating and investment decisions. For example, in the short-run "it requires purchasing fuel and other inputs at lowest possible cost, maintaining existing generating plants to avoid costly outages, dispatching plants on an economic basis and taking advantage of opportunities to make economic purchases from other utilities." Opinion 203, 25 FERC at 62,033. In the long-run, efficiency requires that market conditions be anticipated "with sufficient accuracy to avoid being caught with too little or too much generating capacity, deciding on the right mix of baseload, intermediate and peaking capacity, building new plants at minimum costs and retiring plants that are economically obsolete." Opinion No. 203, 25 FERC at 62,033.

The WSPP proposal, like the Southwest Experiment, focuses on one dimension of efficiency—exchange efficiency.[14] Because not all utilities are equally good at building and operating generating plants,[15] we believe that a rational regulatory policy requires that we encourage electric utilities to engage in bulk power trades that coordinate their resources and thus produce efficiency gains.[16] Efficient coordination trades [17] result in gains for all parties involved. The WSPP has proposed broad pricing flexibility for Experiment commodities as a way of improving present allocations. This could be especially important with respect to transmission capacity which, according to the Participants, is fully utilized on transmission lines between major control areas much of the time. WSPP Letter at 9.

[13] Pennsylvania Water & Power Co. v. FPC, 343 U.S. 414, 418 (1952). *See also* Atlantic Refining Co. v. Public Service Commission of New York, 360 U.S. 378, 388 (1959); and Public Systems v. FERC, 606 F.2d 973 979 , n. 27 (D.C. Cir. 1979) which provided that "[b]oth the Natural Gas Act and the Federal Power Act aim to protect consumers from exorbitant prices and unfair business practices. This purpose can be seen in the statutory requirement that rates be just, reasonable, and nondiscriminatory.

[14] Exchange efficiency refers to the cost savings that result from low incremental cost generation replacing high incremental cost generation. *See 1985 Rand Report* at 23. Wholesale bulk power sales are the key to exchange efficiency.

[15] For some recent statistical evidence, *see* Paul L. Joskow and Nancy Rose, "The Effects of Technological Change Experience and Environmental Regulation on the Construction Costs of Coal-Burning Generating Units." *Rand Journal of Economics*, Spring, 1985; and Paul Joskow and Richard Schmalensee, "The Performance of Coal-Burning Electric Generating Units In the United States: 1960–1980," MIT Economics Department, Working Paper No. 379, July, 1985 at 37.

[16] These trades are an important source of supply input for utilities. In 1984, about 29 percent of the energy delivered to the investor-owned utilities' native load was purchased in coordination markets.

[17] From an economic perspective, efficient trades are those that reduce the nation's total cost of supplying power at a given reliability level or improve reliability at a given cost. The nation's total cost of supplying power will be reduced whenever the trade allows electricity from a high cost generating source to be displaced by electricity supplied at a lower incremental cost. These costs are typically variable generating costs, but can also include generation and transmission capital costs and the value of foregone opportunities when capacity is scarce.

Thus, the Participants will test whether pricing flexibility and expanded information will increase overall efficiency by encouraging more and better trades. *See Cliffs Electric Service Company, et al.*, 32 FERC ¶ 61,372 at 61,832–61,833 (1985), and Opinion No. 203, 25 FERC at 62,033.

B. Competition

The Commission's obligation to promote competition has long been recognized by the courts. *See* Opinion No. 203, 25 FERC at 62,037–62,038; *Otter Tail Power Company v. U.S.*, 410 U.S. 366, 374 (1973); *Gulf States Utilities Company v. F.P.C.*, 411 U.S. 747, 758–759 (1973); *Central Iowa Power Cooperative v. FERC*, 606 F.2d 1156, 1162 (D.C. Cir. 1979); *Public Systems v. FERC*, 606 F.2d 973, 982 (D.C. Cir. 1979).

The Supreme Court has instructed the Commission in exercising its "important and broad regulatory power" over the electric utility industry, "to consider, in appropriate circumstances, the anti-competitive effects of regulated aspects of interstate utility operations" pursuant to the requirements of sections 205 and 206 of the FPA. *Gulf States Utilities Company v. F.P.C., supra*, 411 U.S. at 758–759; *see also Otter Tail Power Company v. United States, supra*, 410 U.S. at 374. Moreover, Congress has found that the national public interest and the interest of consumers of electric energy were or might be "adversely affected" by the "evils" resulting from "restraint of free and independent competition" among public utility companies. *See* Public Utility Holding Company Act of 1935, § 1(b)(2), 15 U.S.C. § 79a(b)(2) (1982). The reason for this concern is clear. As we stated earlier, competition is valuable because it encourages utilities to make efficient decisions with a minimum of regulatory intervention. Ultimately, consumers should benefit from lower prices as competition improves efficiency. Any restraints of trade could worsen efficiency and increase prices. *See* Opinion No. 203, 25 FERC at 62,038.

Developments in the electric utility industry indicate that perhaps a more competitive structure is both possible and desirable, at least with respect to certain types of trade. It has been suggested to us that "where competitive forces exist, the Commission should take them into account in determining the degree and type of regulation necessary." *American Electric Power Service Corporation v. FERC*, 675 F.2d 1226, 1236 (D.C. Cir. 1982). In pursuing this approach, we have an obligation to protect consumers by not allowing pricing flexibility in those markets where buyers are totally captive, *i.e.*, where competitive forces do not exist. In order to comply with our mandate of promoting competition to achieve just and reasonable rates, we need to be able to distinguish between those markets that are workably competitive and those that are not.

The Commission must, therefore, evaluate whether, and the extent to which, our regulations need to be reformed to rely more on market forces. This comports with our view of regulation that was expressed in the NOI:

> Competition can be a valuable complement to regulation. Traditional regulation is essentially reactive. Its success can be questionable during times of changing industry conditions. Competition, on the other hand, encourages firms to make efficient decisions with a minimum of regulatory intervention. Regulation should allow utilities to respond to market conditions where possible in a manner consistent with the public interest.

50 FR at 23,445–23,446, FERC Statutes and Regulations at 35,628.

The WSPP proposal has the potential for making coordination markets more competitive in at least three ways. First, the number of participants in the market would increase. More buyers and sellers increase the number of options available and thereby reduce the market power of any particular utility. The expanded contractual mechanism of WSPP, especially with regard to transmission service, increases the number of potential trading partners for the four Experiment commodities.

Second, better information on prices and services would be provided. Poor information, which increases the cost of searching for the best trade opportunities, can be a potential source of market power in bulk power markets. *See 1985 Rand Report* at 37. WSPP's electronic bulletin board will provide daily *buy and sell* quotes to *all* Participants for *all* Experiment commodities. Information availability should be high and search costs low.[18] Consequently, competition will be enhanced.

Third, pricing flexibility should improve competition. There are two dimensions to pricing flexibility. One dimension is the ability to change prices quickly. A competitive market simply cannot function unless the participants can make their own pricing decisions and put them into practice to take advantage of fast changing market conditions. Opinion No. 203, 25 FERC at 62,050. At times, a seller needs the flexibility to reduce prices quickly to make or retain a sale, even though its profits may be small. At times when demand is high, prices need to be raised quickly to allocate scarce resources to those customers who value them the most. Without pricing flexibility, competitive markets cannot function efficiently.

The other dimension is to allow prices to reach market clearing levels. Determining prices by other criteria may hinder optional resource allocation.[19] The WSPP proposes that prices for Experiment commodities be set within two price zones that are much broader than those currently allowed by the Commission. We believe that the concept of pricing flexibility holds the promise of ensuring that the bulk power service goes to those buyers who value it the most.

We emphasize that our interest is not in competition for its own sake but in the efficiences that can be obtained from a competitive market. Many of the aspects of the WSPP that should enhance competition are the same as those that should increase efficiency. The Supreme Court has observed that the prinicipal reason for promoting competition is that it leads to greater efficiency through "the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress." *Northern Pacific Railway Co. v. United States*, 356 U.S. 1, 4 (1958). Competition enhances efficiency through the "incentive for innovation by the regulated companies themselves and for their coming forward with proposals for better services, lower prices or both". *Northern Natural Gas Co. v. Federal Power Commission*, 399 F.2d 953, 964–965 (D.C. Cir. 1968). The reason for this is that "competition penalizes a seller that is inefficient . . . Consumers, in turn, benefit beause the improvements in the efficiency lead to lower prices." Opinion No. 203, 25 FERC at 62,038.

In my opinion No. 203, we cited two key prerequisites that need to be satisfied for a bulk power market to be considered competitive: (1) that each utility be able to transact business with

[18] *See* WSPP letter at 10. We believe, therefore, that APPA is incorrect when it states that only sell offers will be available. *See* APPA response to WSPP amended filing at 17.

[19] Regulated rate ceilings may constrain prices below market-clearing levels. Once administered price ceilings are reached, sellers may become indifferent to the value of the commodity to various potential buyers because earnings will not be affected by the choice of a buyer. Sellers may resort to some arbitrary allocation method that does not guarantee that buyers who actually receive the coordination service are the ones who value it the most. This can be inefficient in that the highest cost generation may not be displaced by the seller's lower cost energy.

every other participant for the commodities transacted; and (2) that no utility, whether it is a buyer or a seller, can find itself in a position to influence appreciably the price at which transactions take place. *See* Opinion No. 203, 25 FERC at 62,038, citing F.M. Sherer, *Industrial Market Structure and Economic Performance*, 10 (1980) and A. Alchian and W. Allen, *University Economics*, 104–113 (1969). The best way to determine whether these prerequisites are met in the WSPP is to conduct a real world "market Experiment" and observe the outcome. Because the WSPP is an experiment, we cannot know the outcome with certainty until the Experiment is completed. However, we have reason to believe that these prerequisites will be met.

First, the WSPP would include a large number of Participants who own a substantial amount and variety of generating capacity. Thus, there would be a significant number of alternative buyers and sellers. (*See* discussion concerning Participants located wholly within another utility's service area, *infra* at n. 25.) In addition, we expect that the electronic bulletin board would improve communication within the market, and thus, increase the Participants' knowledge of those alternatives. As a result, a seller would probably not be able to charge an unreasonable price, because each buyer could turn to alternative sellers. Second, many Participants would function as both buyers and sellers. As a result, a seller would likely be reluctant to charge unreasonable prices to buyers for fear of later retaliation when that seller became a buyer. Third, the transmission system operated by WSPP Participants is extensive, and most Participants are either interconnected with more than one utility or have transmission arrangements. Thus, many Participants would be able to receive transmission service from more than one transmission owner.

3. Coordination

Section 202(a) of the FPA provided that a purpose of our predecessor, the Federal Power Commission, was to assure "an abundant supply of electric energy throughout the United States with the greatest possible economy" and that, to this end, the Commission should encourage *"voluntary* interconnection and coordination or facilities for the generation, transmission and sale of electric energy." 16 U.S.C. 824a(a) (1982) (emphasis added.) While the Department of Energy Organization Act, 42 U.S.C. 7107–7352 (1982), did not delegate to the Commission the specific authority under section 202(a) of the FPA, section 205 of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. §824–1(a) (1982), reaffirms the Commission's authority to promote voluntary coordination of electric utilities "if the Commission determines that such voluntary coordination is designed to obtain economical utilization of facilities and resources in any area." The WSPP Agreement, in providing for an experimental coordination pool among the Participants, comports with the directive of section 205 of PURPA. *See Mississippi Industries v. FERC, et al.*, Nos. 85–1611, *et al.*, (D.C. Cir. Jan. 6, 1987), slip op. at 72–73.

Coordination is likely to result when utilities are able to respond to accurate price signals. If the market price is lower than the cost of generating its own electricity, a rational utility will buy energy on the market and reduce the loading on its own units. If the market price is higher than the cost of self-generation, a rational utility will sell energy by increasing the loading of its own units. Thus, individual utilities may coordinate their actions to move the region closer to the generation configuration that produces electricity at the lowest possible cost.

The WSPP Experiment may affect both short and long-term benefits in the market. The short-term benefit would be a possible reduction in the cost of producing and transmitting electricity over a two-year period. If the Experiment is a success, it could be used as a basis for developing markets for longer-term transactions which will send more accurate signals as to the need for future capacity and transmission requirements. *See* Opinion No. 203, 25 FERC at 62,039.

Competition and coordination promote efficiency, the Commission's "basic goal" in regulating the electric utility industry. *See Northern Natural Gas Co. v. FPC*, 399 F.2d 953, 959 (D.C. Cir. 1968); Opinion No. 203, 25 FERC at 62,033. It is on the basis of efficiency, and the likelihood that increased efficiency will result in lower rates to consumers, that we shall approve the experimental rates in the WSPP as just and reasonable.

II. The Experimental Approach

A. Why Use an Experiment

The Commission is again utilizing experimentation to test new theories for improving efficiency in the bulk power market. An experiment is appropriate here for the same reasons it was appropriate in the Southwest Experiment:

First, such experiments permit an analysis of the effects of a particular modification of regulation without, at the same time, subjecting the entire electric utility industry to the regulatory "treatment". Second, they allow comparisons among alternative treatments, or alternative values of the same treatment, so that the most desirable regulatory changes can be identified. Third, they make possible an examination of the administrative problems associated with modified regulation prior to introducing the change for an entire industry. Finally, they provide confidence in the desirability of regulatory change in a way that no simulation study or laboratory experiment could.

Opinion No. 203, 25 FERC at 62,040, citing Jan Acton and Stanley M. Besen, *Issues in the Design of a Market Experiment for Bulk Electric Power* (December 15, 1983) *(1983 Rand Report)*. More can be learned in two years of an actual market test than years of laboratory studies or hearings. In addition, the Experiment in this case can be terminated after one year. If it proves not to be in the public interest, the Participants can return to the present method of trading with little or no disruption.

B. Criteria

Initially, the Commission recognizes that the WSPP Experiment differs in several respects from the Southwest Experiment. *See* Attachment. It is precisely for this reason that the WSPP Experiment is valuable. There would be no reason for this Experiment if the same conditions were tested as in the earlier experiment. The Southwest Experiment tested four "treatments" for improving coordination trades of electric commodities.[20] However, Opinion No. 203 did not state that these are the only set of treatments which must be in place before an experiment would be acceptable.

Both the Participants and the Commission are interested in exploring new approaches to power marketing in the electric utility industry. The proposed WSPP represents one such new approach. We have a duty, however, to not embark on experimentation for its own sake. We must carefully review all proposals to ensure that certain general criteria are met before we can allow the experiment to proceed.

1. *Does the proposed experiment serve a vital policy objective?* Yes. The WSPP will provide the Commission with valuable real-world information on ways to promote competition and

[20] "Treatment" is the scientific term used to describe a significant change in existing conditions introduced by an experiment.

coordination and improve efficiency in jurisdictional wholesale markets for electricity. These are among the basic policy goals of this Commission. *See* Part I, *supra*. We have a number of options for acquiring information that can improve our implementation of the goals. These include rate cases, generic inquiry, and rulemaking proceedings. However, the ultimate test of any theory,[21] in either the physical or social sciences, is real-world experience. Therein lies the special value of experimentation. *See* discussion in Part II. A. *supra*.

2. *Is the proposed experiment designed properly to serve that objective?* Yes. The WSPP proposal uses many of the same elements as the Southwest Experiment. First, the WSPP will have a finite life of two years, as did the Southwest Experiment. Individual Participants can withdraw after one year. WSPP Agreement, Section 5.1. At the end of the Experiment, neither the Commission nor the Participants are obligated to continue any of the special treatments.

Second, the Participants have made arrangements for data collection and analysis and will also furnish the Commission with reports on the Experiment's results. The proposal, as modified by this order, will provide the Commission with a reasonable basis for objectively evaluating present policies against the Experimental treatments. *See* Part IV, *infra*.

Third, the WSPP Experiment tests a manageable number of treatments. As a practical matter, a full experiment can apply "at any given time only one incentive scheme, i.e., set of treatments . . . to all utilities, and only a few sets of treatments can be analyzed during the entire experiment. *See 1985 Rand Report* at 6. That is, too many treatments provide too much data to be sorted and analyzed, and it may be impossible to determine which treatment produced which result. The WSPP Experiment involves only two treatments: substantial flexibility for four commodities and greatly enhanced information on potential trades. We think that these two treatments should not pose any analytical problems.

Fourth, an experimental market must also be adequately organized. Organization in a market lowers the costs of participants to search out and select the best trade. High search costs are a source of market power. *See 1985 Rand Report* at 37. Lowering search costs enhances competition and efficiency. The proposed WSPP electronic bulletin board is a highly organized way to bring buyers and sellers together.[22] It will keep search costs to a minimum and should allow prices to gravitate toward common levels, a hallmark of competitive markets. *See 1985 Rand Report* at 28–31.

3. *Is there reason to think that the proposed experiment will produce more good than harm?* Yes. The potential benefits of the WSPP should outweigh the potential harms, both in the short- and long-term. The principal objective of the Experiment is to better allocate generation and transmission capacity through pricing flexibility and improved information. The Participants say they are dealing in an essentially constrained transmission market. WSPP amended filing at 1. Pricing flexibility might immediately allocate resources better and result in improved trades. The ultimate benefit would be lower regional costs for generating electricity and, consequently, lower consumer prices during the Experiment. This is a potentially significant benefit because generating costs comprise most of a utility's operating expense.[23]

From a longer term view, the WSPP should produce information that will be useful to the Commission in its analysis of how to regulate wholesale electricity and transmission sales. To the extent our policy review improves generation efficiency, the WSPP should indirectly contribute to industry-wide improvements.

Balanced against these considerations is the potential that the WSPP may cause prices to rise *unnecessarily* above present levels due to the exercise of market power. While this is a possibility, we think the likelihood of benefits to be gained will exceed the likelihood of any harm that might result. In addition, the apparent existence of alternative transmission paths and alternative sources of power for most of the Participants and the superior information sharing should mitigate these concerns. Moreover, the Participants are always free to revert to their existing contractual arrangements.

Two points regarding experiments and the balancing of benefits and harm must, however, be kept in mind.

First, experimental action is never certain—if it were, it would not be an experiment. However, we have determined that an actual test of new methods to achieve greater efficiency in the market will provide us with necessary data on which to base a proper reevaluation of our policies regarding bulk power transactions. In this regard, our statement in Opinion No. 203–A applies here as well:

> . . . [W]e believe that it is reasonable to expect that the experiment market will be quite competitive. We would be less than honest, however, if we claimed total certainty. The very reason for the experiment is to learn more about the interplay between competition and operating, planning and contractual considerations.

27 FERC ¶ 61,154 at 61,284 (1984).

Second, even as modified to protect against anticipated harms and to improve the data collection and analysis, the WSPP may not be a perfect experiment. However, it is unlikely that any "real world" experiment will be perfect. *See 1985 Rand Report* at 6. There can be no absolute assurances against any harm from an experiment if it is truly an experiment. We can only balance likely benefits and the potential harms with the result that we expect a greater likelihood of benefit than harm. The Court of Appeals for the District of Columbia Circuit stated that:

> there are reasonable experiments and arbitrary experiments. The law . . . does not demand impossible predictability, but it does demand an articulation, in response to serious objections, of the Commission's reasons for believing that more good than harm will come of its action—even experimental action.

Maryland People's Counsel v. FERC, 761 F.2d 768, 779 (D.C. Cir. 1985). In this regard, the Commission has considered and will address in the following section each of the major objections to the WSPP. In this respect, our decision, is "based on a consideration of the relevant factors." *Motor Vehicle Manufacturers Ass'n, Inc. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 2943 (1983). We believe that, as modified, in light of our concerns and the concerns of those who are interested in this Experiment, the WSPP is likely to produce more benefit than harm and provide us with valuable data about promoting greater efficiency in the electric utility bulk power market.

III. Responses to WSPP Filing

The filing in this docket has been amended and a new notice has been

[21] Circuit Judge [now Chief Judge] Patricia Wald stated that the courts should be satisfied that "the factual premises of the economic theories put forth by the agencies are accurate in the case before us and that the predicted results according to the theories are not in outright conflict with the facts before us." Institute of Public Utilities, Williamsburg, Virginia, December 3, 1984 at 8.

[22] The information displayed on the board could save up to 105 separate searches for each Experiment commodity.

[23] Generating expenses account for almost 80 percent of electric utility operation and maintenance expense. *See* EIA, *Financial Statistics of Selected Electric Utilities 1984*, Table 6 at 17.

issued that specifies a comment date of February 25, 1987. All of the comments received on or before that date may be considered timely. Therefore, under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 (1986)), the timely, unopposed interventions serve to make the Public Service Commission of Nevada, CPUC, BPA, NCPA, CEC, PNM, APS, SCE, PGE, Pacific, SMUD NP, SDG&E, and ELCON parties to this proceeding. In light of the new notice and comment deadline, we find that SCE's opposition to APPA's motion to intervene as untimely is a moot issue.

With regard to SCE's claims that APPA has no standing to intervene herein, we note that, while APPA is not an actual or potential Participant to the WSPP, it represents the interests of a large, diverse group of utilities, some of which are or could participate in the Pool. The fact that APPA represents utilities whose interests may be directly affected by this proceeding is sufficient to allow it to intervene. As noted by PGand E, five of the APPA members directly affected herein are members of the proposed Pool, and they approve of the WSPP Experiment as structured. No other APPA members have submitted comments in opposition to the Experiment, nor has APPA cited any of its members who specifically support APPA's positions. However, APPA raises several issues of concern to the Commission and to the electric utility industry. Therefore, we shall grant APPA's motion to intervene and discuss the issues raised in its intervention.

Discussion of Issues

The two sets of substantive issues raised in response to the WSPP pertained to the CPUC's request for additional data, and APPA's and ELCON's oppositions to features of the WSPP. Each will be discussed in turn.

A. CPUC. The CPUC requests that the Participants provide data about certain marginal costs of each buyer and seller in order to accurately measure whether efficiency has increased. Several of the Participants object to the collection of such data as proprietary and anti-competitive and likely to stifle the effective operation of the Pool. A similar issue was raised in the response to Southwest Experiment and we did not there require public disclosure of marginal cost data because it could be very harmful to the utilities' ability to compete in the experimental market and in all bulk markets in which they trade. Opinion No. 203–A, 27 FERC at 61,285. We still agree with that rationale and will apply it here. Moreover, CPUC or any state commission has the authority to collect such data from its jurisdictional utilities if it needs such information for its own regulatory purposes.[24]

B. APPA and ELCON. Both APPA and ELCON express concerns about the WSPP regarding lack of mandatory transmission access, a proposed flexible pricing mechanism which may result in unreasonable prices charged for service, and a need for a hearing. In addition, APPA expresses further concern about classification of the Experimental rates as an initial or change in rates, membership criteria, distribution of benefits from the Pool, clarification of certain provisions, and deficiencies in the proposed reporting requirements. Each of these concerns will be discussed in turn.

1. *Transmission and Pricing.* Two of the most significant issues in the WSPP filing pertain to access by Participants to transmission service and the price charged for that service. Because transmission access is linked to pricing, the discussion of the two issues will overlap somewhat.

a. *Voluntary transmission access.* The experimental rates we accept today do not mandate transmission access. Rather, transmission will be treated like other commodities traded in the Pool. Transmission service will be voluntary and subject to a price ceiling. This treatment of transmission access is very different from the Southwest Experiment. The Southwest Experiment provided the assurance that there would be access by all Participants to transmission of the commodities that were traded. This is a crucial difference between the Southwest Experiment and WSPP. The WSPP will test the assertion that mandatory transmission is necessary for competition to develop, and will provide the Commission with the opportunity to observe whether voluntary transmission access will allow competitive forces to take over and thereby relax the need for the price regulation to which utilities are currently subject. Ideally, prices should reflect supply and demand conditions in the absence of market distortions, and should apply to transactions in both energy commodities and transmission service. The Experiment may show that non-mandatory transmission service results in more and better coordination trades, thereby lowering the overall cost of producing electricity.

[24] Although BPA has volunteered to provide the Commission with certain cost information (*see* Summary of Comments to WSPP Amending Filing, *supra*), we shall not require the filing of such information from the jurisdictional utilities, for the reasons stated herein.

APPA and ELCON oppose both the absence of a requirement for transmission access in the WSPP proposal and the flexible transmission pricing mechanism. ELCON and APPA say that the Participants have not given reasonable assurances of a competitive market to control prices; thus, there can be no assurances that the rates charged under the WSPP Agreement will be reasonable. APPA argues that control over transmission in the WSPP region is highly monopolistic, and that the Agreement would give a Participant with monopoly power over transmission the ability to extract a monopoly price. APPA's motion to intervene at 8–9. In support of its assertions, APPA cites the following language from our approval of the Southwest Experiment.

> Without a guarantee that wheeling service will be provided on these occasions, it is unlikely that a competitive market for the two experimental commodities could emerge. The likelihood that such a market will emerge is, of course, what allows us to make the regulatory modifications requested by the utilities. We must thus satisfy ourselves that the utilities are committed to providing wheeling service before we can approve the experiment.

Opinion No. 203, 25 FERC at 62,046.

However, our position in the Southwest Experiment was that regulation could be relaxed under circumstances that we believed were likely to result in a competitive market. While assured transmission access is often necessary for a competitive market to exist, we did not conclude in the Southwest Experiment, as APPA claims, that assured transmission access at a reasonable, defined cost must always be present for a viable, competitive market to exist. *See* APPA's motion to intervene at 3, 8.

There are several reasons why we believe that the special circumstances of the WSPP are not likely to foster the exercise of monopoly power by some Participants. The ownership and control over particular transmission lines does not necessarily translate into monopoly power. "Monopoly power" by definition involves a lack of viable alternatives. *See e.g.,* C.E. Ferguson, *Microeconomic Theory,* Richard D. Irwin, Inc., Homewood, Ill. 1960 and 253. A Participant in the WSPP is only likely to be subject to monopoly power by a particular transmission owner if the Participant does not have an alternative source of power for the amount of power delivered by that particular transmission owner's system. In such a case, the utility would have no viable alternative other than to use that transmission owner's system. However,

if the utility has ways of acquiring electricity other than over the particular transmission owner's system, that transmission owner's monopoly power would be reduced. These alternatives need not be alternative transmission services, and might include: 1) other existing transmission lines owned by other entities delivering electricity to the utility; 2) the utility's own generation capacity; 3) the purchase of electricity from cogenerators and small power producers and other sources of generation located within the utility's service territory; 4) the purchase of electricity from adjacent utilities that do not require third-party wheeling; or 5) construction of new transmission facilities (as a longer-term alternative). The alternatives would place natural limits on prices that any particular transmission owner could charge.[25]

It appears that, except for NCPA, the WSPP Participants may all have viable alternatives to wheeling by any particular Participant.[26] For example, all of the Participants own their own generation and transmission capacity. They also have a significant number of alternative trading partners in the WSPP.[27] The fact that each Participant is likely to be both a buyer and a seller may also limit each Participant's desire to control its transmission lines and to extract monopolistic rents. That is, a Participant is likely to deal fairly with other Participants in the hope of gaining fair treatment in return. The potential for monopoly control may also be reduced because the WSPP does not change any existing contractual arrangements. Thus, transmission service under existing contractual arrangements will remain an alternative to transmission service under the WSPP.

[25] Of course, natural limits imposed by substitutes do not exist for transmission service for entities located wholly within the service territory of a larger utility. However, all such entities have existing rate schedules and may also benefit from the trade agreements made by their sellers who are Participants, if the savings are passed to these entities through subsequent trades.

[26] *See* BPA's answer to APPA's motion to intervene (BPA answer) at 7. With regard to NCPA's protection under the WSPP, we note that NCPA voluntarily entered into the Pool Agreement with the anticipation of benefitting from more and better trades, and it may revert to trading under its current rate schedules, should NCPA become dissatisfied with the operation of the Pool or if the Pool proves inefficient. This rationale applies as well to other potential participants which do not possess generation and transmission capacity.

[27] For example, in 1985, one Participant bought from three sources, another bought from six sources, and the rest of the Participants bought from between ten and twenty-six sources. FERC Form No. 1, Annual Report of Major Electric Utilities, Licenses, and Others (1985); and EIA Form No. 412, Annual Report of Public Electric Utilities (1985). Data were not available for NCPA and AEP.

The WSPP proposal and the various pleadings that have been filed in this case present us with two diametrically opposed assessments of the market power of transmission owners in the western United States. APPA contends that "(c)ontrol over transmission in the region covered by the Agreement is highly monopolistic." APPA's motion to intervene at 8. SCE, on the other hand, asserts that "no Participant has anything approaching monopoly power." SCE's answer to APPA's motion at 25.

This Experiment provides us with a rare opportunity to assess the degree to which control over particular transmission lines conveys monopoly power. However, it is not an issue that can be addressed in the abstract. The market must actually be tested and the information which will become available during the Experiment must provide a basis for identifying any potential monopoly or allowing for the potential of opening the market as a whole to greater competition if no monopoly situation develops. This will help the Commission to identify factors that promote workably competitive markets. As in any truly competitive market, the WSPP will be more beneficial to some Participants than to others. Our concern, however, is whether the total cost of power across the WSPP region can be reduced for the eventual benefit of consumers. Opinion No. 203, 25 FERC at 62,029.

In sum, there are several reasons why the Commission can approve of the WSPP with voluntary transmission access:

(1) Through a carefully structured program, the WSPP Experiment will provide the Commission with valuable information on the operation of a major bulk power market for use in reevaluating our regulation of the bulk power industry.

(2) Competition is likely to occur in the WSPP market because: (a) the number of Participants in the market will increase due to the expanded contractual mechanisms of the WSPP (especially with regard to transmission services); (b) there will be better information on prices and services due to the electronic bulletin board; and (c) there will be expanded access to both generation and transmission services due to increased pricing flexibility.

(3) It is unlikely that any Participant in the WSPP will be able to affect appreciably the delivered price of electricity in the Pool because of the significant number of WSPP members, the fact that each Participant may be both a buyer and a seller, the variety of generating capacity in the region, the extent of the transmission systems in the West, and the number of alternatives available to each Participant for the various transactions.

(3) The voluntary nature of the WSPP Experiment satisfies the mandate of section 205 of PURPA to encourage voluntary coordination. The package to which the Participants have agreed provides voluntary transmission access to test whether the market will operate more efficiently (*i.e.*, competitively) without mandating transmission access.

(4) The WSPP is an experiment of limited two-year duration with no precedential value regarding the particular trades within that period. *See* PG&E's answer to APPA's motion to intervene PGandE's answer) at 10. Rather, its primary purpose is to provide information to be used by the Commission to reevaluate its regulatory policy toward bulk marketing.

(5) There is little potential for harm from monopoly power. The WSPP Participants are not locked into using the WSPP; it is a voluntary pool and offers an alternative to current arrangements. If the Pool does not prove to be economically beneficial, a Participant can forego trading in the Pool and can continue trading under its existing rate schedules without penalty. A Participant can entirely drop out of the WSPP after only one year. All Participants except NCPA are interconnected with more than one Participant, and that NCPA is nevertheless protected against undue harm by an agreement with PGandE, and its other existing arrangements. In addition, no utilities (*i.e.* either actual or potential participants) have complained about the lack of transmission access. Finally the Experiment and all of its transactions is subject to public scrutiny.

(6) APPA and ELCON have not provided any bases to support their allegations of harm resulting from voluntary transmission access. All of their concerns about monopoly are speculative. Without a more substantial demonstration of actual harm likely to occur from the Experiment, we are reluctant to hold up the operation of a plan which may demonstrate that the western market could operate more efficiently.

(7) For those who may be aggrieved by a particular trade in the Pool, we have listed avenues of recourse through which the injured party can seek recourse. *See* Part V for discussion of the remedies, *infra.*

b. *Pricing Flexibility.* The Commission will accept the proposed pricing provisions in this Experiment. In this

regard, we are viewing the WSPP proposal in a similar way as the Southwest Experiment in which we also accepted a type of flexible pricing scheme as a departure from the cost-based rate treatment.

One of the functions of a good pricing system is to allocate scarce capacity to users who give it the highest value. We are especially concerned that the present pricing system may not efficiently allocate fully loaded transmission capacity in the WSPP region, for the following reasons:

Portions of the transmission system operated by the Participants are often fully loaded. WSPP amended filing at 1. When transmission capacity is fully loaded, a utility may have to choose between selling and transmitting power to a purchaser from its own generators, and transmitting power generated by a third party to the same purchaser. When the generating costs of the utility owning the transmission facilities are higher than those of a third party, the total generating costs would be reduced, and greater efficiency would thereby result if the third party generated the power instead. However, such an efficient outcome may not always take place under current policy. If the regulated transmission price results in lower profits than those earned by a transmission owner which sells and transmits its own power, that owner is not likely to wheel the lower cost generation for the third party.

On the other hand, the transmission owner would more likely be willing to wheel the third party's power if the transmission price could be raised sufficiently to compensate for the foregone profits from the displaced sale. Thus, when transmission capacity is fully loaded, increased pricing flexibility, such as that proposed in the WSPP, may encourage transmission owners to make their capacity available to the lower cost generators.

Current inflexible rate schedules may also prevent scarce transmission capacity from being allocated among alternative third parties to the most efficient wheeling trade. There may be demand by third parties for more transmission capacity than is available for trades with benefits that exceed the existing regulated price. In this situation, all traders would be willing to pay more for the capacity than the regulated price just to obtain the excess capacity. However, since the owner must charge a regulated price that is less than that which all potential traders are willing to pay for the transmission service, the owner has no reason to allocate the capacity to the most efficient trade. The owner may, in that case, resort to some arbitrary means of selling the capacity, such as first-come, first-served. This is highly inefficient. The WSPP proposal would attempt to eliminate this inefficiency by removing the price restrictions so that an owner could sell the capacity to those who give it the highest value and thus are willing to pay the highest price for it. Such flexibility is very important from an efficiency perspective when transmission capacity is fully loaded.

However, it may be possible that, under certain circumstances with increased transmission pricing flexibility, transmission owners could raise transmission prices far above their out-of-pocket costs even when transmission capacity is not fully loaded. When unused capacity exists, such high prices are not necessary to efficiently allocate scarce capacity among competing users. Instead, the high prices would discourage valuable use of the unused capacity and result in monopoly profits to the transmission owners. Indeed, APPA poses this very possibility. *See* APPA response to WSPP amended filing at 8.

However, this inefficient outcome is possible only if the market is not competitive, *i.e.*, when potential users of the transmission capacity do not have viable alternatives. As we explained earlier, we believe that the WSPP Participants will have sufficient alternatives available. Thus, we do not expect to see such monopoly pricing of transmission capacity. However, we are not absolutely certain of this result, and for this reason, we shall conduct this limited term experiment and observe the outcome.[28] Therefore, we are accepting the WSPP filing to test whether increased transmission pricing flexibility can improve efficiency in the use of transmission capacity.

For similar reasons, we accept the pricing flexibility proposed by WSPP for the sale of generation services. We wish to use the WSPP to determine whether increased pricing flexibility for bulk power sales can improve efficiency by allocating scarce generating capacity to those entities that value it most.

Accordingly, we can depart from strict cost-based rates to approve the limits of the rates proposed herein, because a "legitimate policy objective would be served." 25 FERC at 62,049. This policy was derived from an earlier proceeding where we stated:

> With respect to wholesale requirements service, just and reasonable is usually taken to mean equal to cost of service as measured by rate base-rate of return analysis. In coordination transactions, however, such as this case involves, the Commission allows rates which are less closely related to accounting costs but which approximate economic costs or serve other policy objectives.

Ohio Edison Company, Opinion No. 170, "Opinion and Order Approving Just and Reasonable Rates for General Adders," 23 FERC ¶61,344 at 61,749 (1983).

We also find that definitve boundaries within which the prices can fluctuate will promote certainty by providing reference points that the Participants (and their dispatchers) know and understand. Also, given the short life of the Experiment, and the relatively stable fossil energy costs that occurred during the two years that are the base periods for the price ceilings, it is unlikely that either the upper or lower bounds of the actual prices charged for the commodities will change significantly. Therefore, we shall approve the pricing method as proposed.[29] [30]

3. *Initial Rate vs. Change in Rate.* The Commission will accept this filing as a change in rate, rather than as an initial rate. The WSPP Agreement offers an additional alternative for trading power and transmission service. However, the Participants have various agreements on file with the Commission which cover one or more of the services under the WSPP Agreement. The Agreement simply offers an alternative method and price of selling various services which are currently being sold by many Participants to each other or to others on different bases. Thus, the WSPP Agreement is effecting a change in rates rather than proposing initial rates.[31] We shall, however, accept this Agreement without suspension or a requirement for refunds because of the experimental nature of the Pool.

[28] The Southwest Experiment was strongly opposed by a wholesale customer of one of the Participants. This customer asked us to deny the requested pricing flexibility because the experiment was "primarily an agreement between sellers to fix prices above the cost of service" for the purpose of "obtaining monopoly profits." Docket No. ER84-155, City of Gallup, Motion to Intervention at 3 and 4. We rejected Gallup's request and approved the Southwest Experiment because the available evidence suggested that their predictions were not likely to be realized. The results of that experiment proved that we were correct.

[29] APPA's questions about how the Participants plan to value exchanges of service instead of payments are related to the price boundaries proposed herein. We do not have a problem with applying the same values to exchanges of service as are applied to the payments for those services.

[30] As in the Southwest Experiment, we shall waive the application of Order No. 84 pursuant to the Participants' request for experimental rates because we believe that the flexible pricing proposed for the Experiment herein is justified in light of the potential benefits of improved competition and efficiency in the bulk power industry.

[31] The Participants cite as precedence for accepting this filing as an initial rate, our acceptance of other power pool rates as initial rates when first filed. While the WSPP is designated as a "power pool", it is in fact a coordination agreement among several entities. Thus, such comparisons of the WSPP Agreement to "other" power pools are irrelevant.

4. *Membership Criteria.* Under the WSPP proposal, an entity can join the Pool if it is an electric utility which is interconnected directly or contractually with at least one other WSPP member, and which either owns, leases, or controls all or part of at least one generating unit, and operates its control area or has arrangements with a control area operator. APPA challenges the Criteria because they exclude entities without ownership or control of a generating unit but which may otherwise have contractual rights to power and energy. APPA also contends that the "control area" criterion is vague.

The Commission disagrees with APPA on both counts. For a coordination arrangement to work, its members must offer something of substance to the Pool. APPA appears to favor the inclusion of non-generating utilities in WSPP to increase the number of buyers and foster competition but fails to explain how this will necessarily improve efficiency. We see no clear efficiency gains in allowing non-generators into the WSPP. Non-generations would, in all likelihood, be full requirements customers of other utilities. They cannot lower the overall costs of generating electricity because they bring no generation resources to the Pool. Moreover, the WSPP transmission arrangements would not enable non-generators to look beyond the Pool to secure cheaper sources of power. The role of non-generators would potentially be limited to allocating existing Pool resources through better purchasing decisions. However, it is not clear that this would happen. First, the non-generators could not displace a high-cost requiremnts supplier through the WSPP. Requirements buyers need relatively long-term power arrangments. The WSPP will last only two years. Second, allowing non-generators into WSPP as purchasers could actually worsen efficiency. Requirements customers would make their purchase decisions based on requirements service rates. These rates are typically based on the requirements supplier's average historical cost. Average cost-based prices could lead to inefficient purchasing decisions. This problem would be compounded if the non-generator tried to resell the energy in the Pool. *See 1985 Rand Report* at 55–56.

The Commission notes that APPA has made no showing that any utility, including any APPA member, has been denied membership in WSPP. According to the Participants, invitations for membership have gone out repeatedly in the three-year negotiating period to all utilities in the West and membership continues to be open for those interested in the Pool. *See* WSPP Letter at 5–7; and PGandE answer at 10–11. The Commission knows of no mandate that every entity in the WSPP region must be given direct participation in the Pool. Rather, only "undue discrimination" of potential participants must be avoided. "Undue discrimination" is defined as the application of substantially different treatment to "similarly situated" entities without reasons. *See City of Frankfort v. FERC,* 678 F.2d 699 (7th Cir. 1982); *Central Iowa Power Coop. v. FERC,* 606 F.2d 1156 (D.D. Cir. 1979); *Town of Norwood v. FERC,* 587 F.2d 1306 (D.C. Cir. 1978). In this proceeding, APPA presents no evidence that any "similarly situated" utilities have been excluded from the Pool. In fact, the extension of membership to entities that do not even own generating facilities, so long as they have some generation resource rights and arrangements for operations in a control area, is evidence that the WSPP is intended to attract as many traders as possible in the West which are similarly situated to each other. We have received no complaints of discrimination from any potential participant. Because of all of these factors, we believe the membership criteria are fair and reasonable. The Commission also believes that the membership criterion is clear regarding the requirement for operating in a control area or appropriate contractual arrangements for operations in a control area. A utility which has, or contracts for operations in, a control area has an interest likened to ownership or control of an ownership interest that puts it in a comparable bargaining position with other Pool members.

5. *Revenue Treatments.* APPA complains that the WSPP does not provide flow-through of all Pool transaction benefits from the utilities to the rate-payers. We rejected such a provision in the Southwest Experiment and, in fact, authorized the outright retention of 25 percent of the profits to the utilities' stockholders.

Under the WSPP proposal, the Participants would treat benefits in either of two ways: (1) use traditional Commission rate mechanisms, or (2) not include consideration of WSPP transactions in future test period filing but propose at the time of the relevant rate filing the method they will use to pass on the incremental WSPP benefits to requirements customers.

With regard to the second option, the Commission agrees that it would not be proper to require utilities subject to our jurisdiction to reflect the effects of WSPP sales in future test periods since the WSPP Experiment is of a limited duration. The projection of WSPP sales in future test periods could therefore overstate the level of coordination transactions expected in the future and reflected in requirements rates as revenue credits. However, it is not entirely clear how jurisdictional utilities would, under the proposal, insure that requirements ratepayers receive a reasonable portion of the benefits of WSPP sales to the extent that the WSPP results in coordination sales above the level already reflected in requirements rates.

Therefore, we shall accept either method of treating revenues as long as the jurisdictional utility proposes a mechanism to insure that at least 75 percent of the benefits attributable to an increase in the level of coordination sales under the WSPP, not already reflected in the utility's current requirements rates, are flowed through to the utility's requirements ratepayers. This revenue treatment would apply to coordination sales in both the energy commodities and transmission service.[32]

The specific benefit-sharing split of at least 75 percent to ratepayers and 25 percent to stockholders was adopted in the Southwest Experiment and represents a treatment which has already been tested. *See* 25 FERC at 62,054–62,057. As we said in our discussion herein of the experimental approach (Part II), a well-designed experiment contains a limited number of treatments, so that a manageable amount of information can be collected and analyzed regarding the effects of each change. Using the same revenue treatment that was adopted as equitable in the Southwest Experiment avoids the necessity of analyzing the effects of an additional new treatment in the WSPP Experiment.

We do not believe that altering the Participants' proposed revenue sharing proposals will prove to be a problem in going forward with the Experiment. The essential elements to be tested herein are substantial flexibilty regarding four commodities and increased information exchange. These treatments should provide adequate incentives for the

[32] As we noted above, we do not control the treatment of all the benefits that will result from the proposed Experiment. Our jurisdiction extends only to the portion of the benefits to be allocated to the investor-owned utilities' wholesale requirements service customers. The remainder of the benefits is under the control of state regulatory commissions through their regulation of the utilities' retail sales. As provided in note 8, *supra,* BPA will use the rate procedures outlined in the Northwest Power Act, subject to our approval.

utilities to proceed with the Experiment. The Participants themselves state that the purpose of the WSPP is "to provide pricing flexibility to encourage and to increase efficient exchanges of capacity and energy among and between the Participants." WSPP amended filing at 1. They do not mention as one of the goals herein, to increase their profits *vis-a-vis* the consumers.

6. *Clarifications regarding transmission losses and identification of nonparticipants.* APPA requests clarification regarding how transmission losses will be determined and charged. We agree that clarification is needed regarding losses because there is no way to determine if the losses are to be averge, incremental, or some other type of loss. Therefore, approval of this order is conditioned on the requirement that the Participants submit within 90 days from the date of this order a specification of how the losses shall be determined. If the Commission takes no action within 30 days of such submission, the specification will be deemed acceptable.

APPA also requests that the Participants identify non-participants or the amount of coordination transactions currently between Participants and non-participants. We do not believe that such a requirement is necessary or helpful. The WSPP is an experimental coordination agreement among the WSPP Participants. We are concerned primarily with the transactions between Participant buyers and sellers in a major market. Non-participants will continue to operate under their current agreements with Participants and other non-participants. If the trades made in the Pool adversely afffect non-participants, they may use the same remedies available to Participants who may suffer some harm from the WSPP. In this respect, they are protected whether or not the Pool operates or whether they participate in it.

7. *Need for Investigation or Hearing.* APPA requests that the Commission conduct a hearing prior to authorizing the operation of the Pool. We do not believe that a hearing or investigation is necessary or appropriate for the WSPP Experiment. This is because the operation of competitive forces cannot reasonably be predicted in the course of legal debate. A hearing will probably accomplish little or nothing beyond mere speculation about past bulk power marketing operations. The Commission is legally required to encourage voluntary coordination and the Participants have given us an opportunity to further this objective. As modified, this "real world" experiment should provide us with valuable data to reevaluate generally our policies toward power marketing transactions. This view was also applied to the Southwest Experiment where in we said that the very reason we conducted that experiment was "to learn more about the interplay between competition and operating, planning and contractual considerations. That knowledge cannot be acquired, at least initially, through hearings." Opinion No. 203–A, 27 FERC at 61,284. Thus, we firmly believe that in making a determination of how the market will operate in a situation of greater pricing flexibility and voluntary service, a "month of experience will be worth a year of hearings." *American Airlines, Inc. v. C.A.B.*, 359 F.2d 624, 633 (D.C. Cir. 1966).

Therefore, the experimental rates proposed herein shall become effective for a two-year period, commencing the date that the WSPP begins operation. The Participants shall notify the Commission within five days of that date.

8. *Reporting Requirements.* The data and methodology proposed for the Experiment is discussed in the following Part.

IV. Evaluation of the Experiment

A. Background

The Participants propose to develop a "reporting system" to assess the success or failure of the Experiment. The heart of the reporting system will be the plan for data collection. Each participating utility will supply quantitative and qualitative information to a Pool Report Committee. Some data will be submitted monthly while other data will be submitted annually. Using this information, the Participants will provide the Commission with interim and final reports.

The reports are essential to the Commission's evaluation of the WSPP Experiment and to a reexamination of our policies regarding bulk power marketing in general. In fact, the information gathered from the operation of this Experiment is, from the Commission's long-term perspective, the most important element in allowing the Experiment to proceed.[33] The Participants themselves recognize and emphasize the importance of the reports for the Commission to make reasoned decisions about whether increased competition and more flexible pricing of coordination services in the West will increase the efficiency of electric supply. *See* WSPP Letter at 8, BPA answer at 2–5, SCE answer to APPA at 9. The report may also demonstrate that no change is necessary or feasible at this time if the trades are not made or are not made at competitive prices. At a mimimum, the reports should help the Commission distinguish competitive from non-competitive markets.

For these goals to be satisfied, the reports of the Experiment must comprise an objective appraisal of the activity that occurs under the Experiment. We are concerned about the value of the reports because they will be prepared and analyzed by a committee chosen by the Participants themselves. Even though the committee is made up of representatives from a diverse cross-section of the utilities, these representatives are still "in-house". As members of the Pool, they are interested in the success of this Pool. They will undoubtedly want to report its operation in the best light. This is understandable. However, for the Commission to utilize the results of the Experiment, we need reports that we know will be prepared objectivity, will cite all of the postive and negative aspects of the Pool, and will not represent the views of any dominant Participants. A reason why we approved the plan for the report in the Southwest Experiment was because the evaluation was to be performed by the Rand Corporation, a respected, independent, organization. The Rand Corporation's total independence from the Participants gave the report objectively and credibility. Therefore, we shall require the Participates to ensure a similar independent and objective analysis of the data collected from the WSPP Experiment. This will be discussed in greater detail, *infra.*

B. Specific Consideration

Besides securing objective data for the reports, it is critical that the reports: (1) ask the right questions, (2) employ a method of analysis that will be able to answer these questions, and (3) collect data that are reliable and consistent. Without assurances of a reporting system designed to meet these criteria objectively, the Experiment may ultimately prove to be of little value to both the Participants and to the Commission. Each of these elements is discussed in turn.

1. *Are the Participants Asking The Right Questions.* The Participants appear to be collecting data to answer three major question: (1) Does the WSPP enhance competition? (2) Does the WSPP encourage efficient operation? and (3) Does the WSPP produce mutual

[33] Ultimately, of course, the Commission's goal is to reduce rates through increased competition and coordination. However, we need information such as that which this Experiment will provide to determine the best means to that end.

benefits? WSPP letter at 12. These questions, while interesting and relevant to our mandates, are likely to produce answers that are not sufficiently focused to be of much use to the Commission in formulating future regulatory policies.

An important goal of the evaluation effort should be to answer the question: Did the Experiment lead to an improvement in economic efficiency? If it did, we would expect to see evidence that the Experiment lowered the overall cost of producing electricity to meet the observed electrical load in the regions in which the Participants operate. *1985 Rand Report* at 1. In making this assessment, we direct the Participants to address the following related questions in their written interim and final reports:

1. Was there any evidence that the allowed pricing flexibility enabled some Participants to set monopoly prices for transmission and the other Experiment services? [34] If so, identify these situations.

2. Suggest "rules of thumb" that would enable the Commission to identify on a "before the fact" basis situations in which a seller is likely to have the power to sell at monopoly prices.

3. Were there situations in which economic efficiency increased even though a seller was able to exercise monpoly power in setting transmission prices? If so, what distinguishes these situations from those in which the exercise of monopoly power led to loss of economic efficiency?

4. Is simultaneous purchase and resale not an adequate substitute for wheeling to ensure an optimal pattern of bulk power trades? If not, why not?

The first two questions are motivated by our need to obtain information that will be useful in appropriately introducing pricing flexibility. One basic way to promote efficiency in competitive markets is to provide pricing flexibility to sellers. That is, "where competitive forces exist, the Commission should take them into account in determining the degree and type of regulations necessary." *American Electric Power Service Corporation* v. *FERC*, 675 F.2d 1226, 1236 (D.C. Cir. 1982). To make this determination, we need to know whether a particular bulk power sale is taking place in a competitive environment. It is not enough to know that bulk power markets, *in general*, are becoming more competitive. As we noted in Opinion No. 203, we have already taken steps on several occasions to enhance competition in providing coordination service. 25 FERC at 62,037. At the same time, no one seriously believes that *all* bulk power markets have become workable competitive.[35] If a buyer has access to many competing sellers of hourly economy energy, it does not necessarily follow that this buyer will also have access to many sellers for other bulk power services such as long-term firm capacity.

If we are going to promote competition by providing pricing flexibility, we need to be able to distinguish between those markets that are competitive and those that are not. Moreover, we must be able to accomplish this task in a way that is administratively feasible. The Commission processes aproximately 800 electric rate filings each year. Little will be gained in the way of regulatory rationality if a full-blown market analysis is required every time we receive a rate filing that requests pricing flexibility.

In a similar manner, little will be gained from the Experiment unless we are able to determine when pricing flexibility leads to more or better bulk power trades and when it does not. The Commission has been told by many utilities that simultaneous purchase-and-resale by an intervening utility often produces the same efficiencies as wheeling. In response to the NOI, *see* comments of Electric Utilities at 30, Nigara Mohawk at 7, New England Electric Power Co. at 30, PGandE at 26–2, and APS at 23. Therefore, because the purchase-and-resale option is currently available, it is important that the Experiment demonstrate the additional efficiencies that can be obtained from combining wheeling with the pricing flexibility being accepted here.

2. *Will the Proposed Method of Analysis Be Able To Answer These Questions?* The filing does not give a clear explanation of the methodology that will be used to analyze the collected data. The Participants apparently assume that their reporting system, by itself, constitutes something akin to a methodology. We disagree. Schedules A through D of Tab 8, "Reporting System", are the only exposition of an analytic approach. Unfortunately, the schedules do not provide the information that we need.

It appears that the Participants are proposing to collect very limited price data. If we are correctly interpreting Schedules A through D, price data will be collected only for economy energy sales. The data will consist of a single number each month for each seller, which will be the average price charged by that seller to all buyers of economy energy during the previous month. For the other three commodities, it does not appear that any price data will be collected, although it is possible that an average price figure could be calculated from the raw data on Schedules B through D. The traditional starting point for determining the existence of monopoly power is to compare prices with incremental costs.[36] The Participants have made it quite clear that they have no intention of supplying each other or the Report Committee with cost data. WSPP amended filing at 13. Therefore, it is unclear how the Participants could answer Question No. 1 of the previous section.

The transmission price data will be more plentiful. It appears that the Participants will report high and low prices for two of the three transmission services by "transmission path provided." *See* Tab 8, "Reporting System" at 14. However, the filing does not explain how this information will be used to assess whether a seller of transmission services has market power over some, or all, of the buyers on a particular transmission path.

In attempting to evaluate whether the WSPP will improve economic efficiency, the filing proposes to identify transactions that would not take place but for the WSPP. While this is important information, it does not go far enough. It is not clear that the overall

[3] The Participants state that they "do not believe that the issue of potential monopoly power can or should be determined in this proceeding." WSPP amended filing at 5. We disagree. The potential for monopoly pricing is the threshold issue in deciding when and how to allow pricing flexibility. "It is of course elementary that maket failure and the control of monopoly power are the central rationales for the imposition of rate regulation." Farmers Union Central Exchange, et. al., v. FERC, 734 F.2d 1486, 1508 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1034 (1984). At the same time, we recognize that the "deadweight" efficiency loss produced by monopoly pricing may, in some situations, be exceeded by the cost savings, (*i.e.*, productive efficiency gains produced by more and better bulk power trades). This is why we are asking Question No. 3, *infra*. In response to the NOI, *see* the comments of the National Economic Research Associates at 145–146; and F.M. Schere, *Industrial Market Structure and Economic Performance*, Rand McNally College Publishing Company, Chicago, (1980) 460, 464.

[35] In response to the NOI, *see* the comments of: PGandE at 6–1 to 6–5; National Economic Research Associates at 6; APPA and the National Rural Electric Cooperative Association at 19; and SDG&E at 114.

[36] *1983 Rand Report* at 52. The Rand Report points out another approach: examining the degree of price dispersion for sales of the same commodity to different buyers by the sellers. From the Participants' perspective, this approach had the advantage of avoiding the need to disclose cost data. However, it requires more detailed price information than the Participants are proposing to collect.

efficiency question can be answered unless the Participants also supply information on sales that were displaced or diverted because of the Experiment.

The lack of a well-defined methodology to answer these concerns is understandable. This is not a standard rate filing. It raises a number of difficult analytical issues and there is not much past experience upon which to rely. To date, there has been only one bulk power market experiment. The Participants want to use an analytic approach different from the one used by Rand Corporation in the Southwest Experiment.[37] We have no problem with this, *per se*. There is no reason to believe that there is a single correct method for analyzing experimental data. However, the lack of a clear methodology, and the absence of what appears to be key data, creates a dilemma for the Commission. We want to give the Participants flexibility in deciding how they will analyze their data. At the same time, we do not want to receive a final report that is analytically flawed or useless. If that happens, it will be a waste of the Participants' time and resources, as well as ours.

The Commission does not believe, as the Participants propose, that the solution is to have a Commission staff member act as a non-voting observer at the Report Committee meeting. WSPP Amended Filing at 7, 9. This may compromise the objectivity of the Commission, as well as that of the staff member to whom we would inevitably turn for advice at the end of the Experiment. Also, we expect that the presence of a Commission employee would have a chilling effect on the openness (and, therefore, the usefulness) of the discussion at these meetings.

We are also not persuaded by the Participants' arguments that the Commission can have confidence that we will receive objective reports because: 1) the Report Committee will consist of a cross-section of entities and disciplines, 2) there will be a provision for dissenting opinions, 3) the Participants have taken adverse positions to each other in the past, and 4) the Pool will contain both net purchasers and net sellers. WSPP amended filing at 6. We are concerned that the Participants' analysis and reporting procedures may lead to one of two outcomes, neither of which is likely to produce to a useful and objective assessment of the Experiment. First, we may get "a negotiated report which may involve trade-offs not related to the experiment." APPA response to WSPP amended filing at 1. While the Commission encourages negotiated settlements in rates cases, we do not want to risk receiving a report that consists of delicately negotiated conclusions for an experiment that could be used to develop future electric ratemaking policies. Second, the reports will contain majority and minority analyses that reflect the various economic interests of the Participants. This outcome is equally undersirable because we would be receiving advocacy research that simply reflects the strategic needs of each Participant. If this happens, it is doubtful that the Commission could sort through the conflicting claims without undertaking a separate, after-the-fact analysis of our own. Both of these outcomes would interfere with our goal of obtaining useful and objective information to further our regulatory mandates.

To avoid these non-productive outcomes, we offer the Participants a choice between two options.

Option A

The Participants will be required to hire an outside consultant (either an individual or organization) that will:

(1) Develop a method of analysis;

(2) Collect the necessary data (while maintaining confidentiality similar to that which existed in the Southwest experiment);

(3) Analyze the data to answer the questions posed on pages F. 1 through F. 4 of Tab 8, "Reporting System," plus the additional questions presented in the previous section of this order; and

(4) Prepare the interim and final reports.

To help lower the cost of implementing this option, we will allow the Participants to limit their data collection and analysis to statistical samples for Items 2 and 3, above, similar to the approach used by the Rand Corporation in the collection and analysis of data from the Southwest Experiement. See *1985 Rand Report* at 85. If the Participants use sampling techniques, the samples selected must be representative of the different market conditions prevailing in WSPP so that the answers to the questions in Item 3 will not be biased. The interim and final reports should contain detailed descriptions of how the samples were selected.

Within 90 days from the date of this order, the Participants will be required to submit to the Commission the name of the consultant with an explanation as to why the individual or organization is qualified to perform this task. If the Commission takes no action within 30 days of such submission, the selection will be deemed acceptable.

Option B

The Participants will be required to do two things:

(1) Hire a consultant to advise them on the development of a methodology on the questions presented on pages F. 1 through F. 4 of Tab 8, "Reporting System," plus the additional questions presented in the previous section of this order. The Participants shall provide the Commission with a description of the methodology no later than 7 months from the date of this order; and

(2) Hire at least 3 consultants to serve on a panel that will produce joint or separate written critiques of the interim and final reports. The critiques will address the following issues:

(a) Did the report respond to the questions presented on pages F. 1 through F. 4 of Tab 8, "Reporting System," plus the additional questions presented in the previous section of this order?

(b) Is it reasonable to believe that the data and methods used by the Participants produced reliable answers to these questions?

The Participants may use statistical sampling to implement this option. The samples will be subject to the same conditions described in Option A, above.

Within 90 days from the date of this order, the Participants will be required to submit to the Commission the names of the consultants noted in Items (1) and (2), above, with an explanation as to why they are qualified to perform these tasks. If the Commission takes no action within 30 days of such submission(s) the selections will be deemed acceptable. The consultant cited in Item (1), above, shall not serve on the panel cited in Item (2), above.

3. *Will the Data be Reliable and Consistent?* Of all the data to be collected, probably the most important data will be an estimate of the "percent of sales attributable to WSPP." The estimate will be made on a monthly basis for transmission service and for

[37] For example, the Rand Report assessed the effect of the treatments using a "baseline" that was keyed to pre-experiment data. *1985 Rand Report* at 68. Here the Participants propose a baseline that will be created from their individual estimates of the level of trade that would have occurred without pricing flexibility and the electronic blackboard. Tab 8, "Reporting System" at 2. Each approach has implementation problems. The WSPP method requires monthly estimates of that which cannot be observed: the level of trade that would have existed absent the Experiment. The Rand approach, on the other hand, requires controls for major external events, such as plant and line outages and changed water conditions, on the level of trade. We have no basis for believing that the Rand approach is necessarily superior.

the three types of bulk power sales. These estimates are particularly important to our understanding of the success or failure of the Experiment.

We recognize that estimates are inherently subjective. However, if these estimates are to be credible, we must have some assurance that they were developed in a consistent manner for all Participants. Therefore, the Commission's final approval of the Experiment is contingent upon the Participants making a supplementary filing no later than 90 days from the date of this order that provides the name of an outside consultant to review for reasonableness and consistency, across Participants, a sample of the estimates of "percent of sales attributable to WSPP" from Schedules A through D. If the Commission takes no action within 30 days of such filing, the selection will be deemed acceptable. We would anticipate that the consultant would: (1) examine at least one data sample per Participant per year; (2) discuss the basis of the estimates with the Participants; (3) determine for a sub-sample of data whether the buyer of the service agrees with the seller's estimates; and (4) list those estimates that it believes are unreasonable along with the reasons for the assessment. A written report prepared by the consultant must be included as an appendix to the interim and final evaluation reports that will be submitted to the Commission. The consultant performing this work shall not be one of the consultants selected under Option A or B (1) described in the previous section.

V. Remedies Against Potential Harms From Experiment

We are satisfied that more good than harm will come of this Experiment. At this time, we have found no entity that will be damaged as a result of the Experiment. Indeed, no actual or potential participant has alleged that it will be damaged by the WSPP. Further, as noted earlier, the potential for abuse appears slight. First, in all but one case (NCPA), the Participants are interconnected with more than one utility. As a result, the negotiation process for transmission service itself should limit excessive price demands. In the case of NCPA, NCPA has entered into a Bilateral Agreement with PGandE, the only utility with which it is interconnected, which outlines both Participants' understanding as to how WSPP will affect the transmission services that PGandE provides NCPA. As a result of this Agreement, which covers long-term firm, interruptible, and certain short-term transmission services, "both PGandE and NCPA have concluded that NCPA's participation in the WSPP will not degrade the transmission service NCPA is now receiving." WSPP amended filing at 5.

Second, WSPP will not displace current transmission and power arrangements. ["A]ll current transmission and power contracts remain in force, and access to non-WSPP services is not changed. The base-line formed by the status remains operative." WSPP amended filing at 2. Transactions under the WSPP are entirely voluntary and presumably Participants will only abandon existing arrangements and engage in transactions under WSPP when they mutually agree that it is in their economic interest to do so. Finally, we recognize that the public scrutiny WSPP will receive during its two years of operation will provide a very real and practical safeguard against abuse.

However, because the WSPP is an experiment, neither the Participants nor the Commission can offer any absolute guarantees that no individual or utility will suffer some injury from the operation of the Pool. We can, however, identify remedies for anyone who feels damaged. There are essentially three remedies for those who are aggrieved: (a) use of procedures in individual rate cases with regard to existing agreements, and in the future cases with regard to sales made under the WSPP; (b) use of the complaint procedures in section 306 of the FPA, 16 U.S.C. § 825e (1982) and in Rule 206 of the Commission Rules of Practice and Procedure, 18 CFR 385.206 (1986), for any action alleged to be in contravention or violation of any statute, rule, order or other law that we administer. Any such complaint would be subject to *expedited* review by this Commission; or (c) use of judicial remedies if a utility has failed in its FPA or PURPA or antitrust mandates. We note, however, that the first two remedies are available only with regard to the utilities over which we have jurisdiction.

VI. Additional Requested Waivers

The Participants have requested certain additional waivers to our regulations to implement the WSPP:

(1) The Participants ask that we pre-accept their notice that these rates will terminate in two years, and that we suspend application of our 120-day notice of termination requirement. We shall grant the waiver based on the reasoning in Opinion No. 203, *i.e.*, that it is an experiment of fixed duration. 25 FERC at 62,043. Therefore, no further order of the Commission shall be required to terminate the Experiment.[38]

(2) The Participants request a general waiver of the filing fees for this filing and all future filings necessary to add new participants to the WSPP. The Commission will not waive these fees. The Participants have not submitted the required evidence as part of a petition for waiver of section 381.106(a) of our regulations "clearly showing either that the applicant does not have the money to pay all or part of the fee, or that if the applicant does pay the fee, the applicant will be placed in financial distress or emergency." We do not believe that any of the Participants "is suffering from severe economic hardship" which makes it "economically unable to pay the appropriate fee for the application" as provided in section 381.106(a). The Commission also notes that our administrative burdens associated with the processing of WSPP filings may or may not be reduced. Even if they are, however, the test applied to fee waiver pertains to a showing of hardship by the applicant, which has not been demonstrated in any way here.[39]

VII. Conclusion

Our ultimate determination in this proceeding is whether the proposed Experimental rates will be just and reasonable. In this regard, we must be satisfied that the rates comply with the underlying purposes of the FPA, and that the overall design of the Experiment is satisfactory. For many of the same reasons we approved the Southwest Experiment, we find that the WSPP proposes just and reasonable rates.

We believe that the proposed rates would serve our overriding objectives in administering the Federal Power Act: to bring about the lowest cost to consumers in the long run, and to maximize efficiency in the production of electricity. Our belief is based on the fact that the WSPP Experiment will show whether we are correct in expecting the rates will create two effects, each of which will promote efficiency: enhanced competition and increased coordination. *See* discussion in Part I. Moreover, we are required to seek improvements in both of these areas.

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[38] However, PGandE shall promptly notify the Commission when the WSPP Experiment is terminated, or when individual participants discontinue their Participation in the WSPP.

[39] *See also* Order No. 435, "Fees Applicable to Electric Utilities, Cogenerators and Small Power Produces", 50 Fed. Reg. 40,347 (October 3, 1985), FERC Statutes and (Regulations Preambles) ¶ 30,663, for a discussion regarding fee requirements and waivers.

We also believe that the design of the Experiment, with the modifications that are required herein, is satisfactory. The WSPP meets the criteria of an acceptable experiment. It has a finite life, tests a manageable number of treatments, the experimental WSPP market is adequately organized through use of the proposed electronic bulletin board, and more benefits than harms are likely to result. *See* discussion in Part II. The Experiment also provides us with a rare opportunity to assess the degree to which control over particular transmission lines conveys monoploy power. Such an assessment can best be made in the context of an actual market test. The Experiment nevertheless provides several safeguards to protect against any monopoly power that might exist. As modified, the WSPP provides a reasonable sharing of profits between ratepayers and stockholders. *See* discussion in Part III. Finally we, believe that the Participants' plan, as modified by our additional requirements herein, produces and evaluates information on the operation of the Pool that is sufficient to perform a rigorous analysis of the results. *See* discussion in Part IV.

We can answer the ultimate question of whether the rates proposed herein are just and reasonable in light of our findings that this Experiment would serve a vital policy objective and that it is well-designed to serve that purpose. As in the Southwest Experiment, we are attempting "to determine experimentally whether a competitive market can be created that will increase efficiency and thus protect consumers as well as, or better than, our present regulation of coordination transactions." 25 FERC at 62,060.

While the WSPP Experiment provides innovations in the areas of transmission access and pricing flexibility, we believe that approval of this Experiment would effect our mandate under PURPA to promote greater efficiency in electric generation through encouraging greater coordination, and address our responsibility to foster and enhance competition in the electric utility industry.

We therefore find the proposed experimental rates to be just and reasonable. By accepting these rates for filing, we do not purport to modify or abrogate any existing contractual obligations. In addition, our approval herein of the WSPP Experiment is fact-specific and should not be used as precedent for our regulation of bulk power markets in general.

The Commission Orders.

(A) APPA's motions to reject the WSPP Agreement and initiate a hearing are hereby denied.

(B) PGandE's request for waiver of the filing fees herein and all future filing fees is hereby denied.

(C) PGandE's request for waiver to allow the Agreement to be accepted as an initial rate is hereby denied.

(D) PGandE's request for waiver of the application of Order No. 84 is hereby granted.

(E) PGand E's request for waiver of the section 35.13 filing requirement is hereby granted for good cause shown.

(F) PGandE's request for waiver of the 120-day advance notice requirement for termination of Rate Schedules A, B, C and D is hereby granted for good cause shown.

(G) PGandE's request for waiver so that the jurisdictional utilities be allowed the option of not including any consideration of WSPP transactions in future test year period filings for ratemaking purposes is hereby granted, covering the two-year period commencing the date that the WSPP begins operation, subject to the requirement that they flow a minimum of 75 percent of their profits to their requirements customers on a current basis, as provided in the body of the order.

(H) The experimental rates proposed herein are accepted for filing as a change in rates, as modified by summary disposition, to become effective for a two-year period commencing the date that the WSPP begins operation, without suspension or hearing.

(I) Summary judgment is hereby ordered, as noted in the body of the order, with respect to providing: (1) a satisfactory specification of how losses are to be determined, (2) the answers to additional questions to be addressed in the interim and final reports of the Experiment, (3) the methodology, data collection, analysis, and critique of the Experiment, and (4) a supplemental filing regarding the review and report on estimates of percent of sales attributable to the WSPP in Schedules A, B, C, and D.

(J) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

COMPARISON OF THE WSPP PROPOSAL AND THE SOUTHWEST EXPERIMENT

	WSPP	Southwest experiment
1. Coverage	15 utilities in 10 States (membership open).	6 utilities in 3 States.
2. Duration	2 years.	2 years.
3. Commodities	Economy energy.	Economy energy.
	Unit commitment service.	Block energy.
	Firm capacity/energy or exchange.	
	Transmission service.	
4. Price zones		
a. Generation services	Up to 245 mills/kwh [1]	9 to 94 mills/kwh.
b. Transmission	1 to 33 mills/kwh [1]	Cost-based: Not an experiment commodity.
5. Transmission access	Access at discretion of owner, subject to membership requirements.	Access required except for contractual and technical reasons.
6. Information exchange	Buy-sell quotes for all commodities posed on "electronic bulletin board."	Bilateral telephone contacts. Some *ex post* trade information.
7. Evaluation of experiment	By Participants [2]	By outside consultant hired by the Commission.
8. Revenue treatments	Issue is deferred to subsequent rate cases or resolved under existing rate schedules [3].	Profit-sharing split of 75 percent to ratepayers and 25 percent to stockholders.

[1] These are based upon the data to be applied to the first year of the Experiment.
[2] Revised herein to require Participants either to hire outside consultant to prepare reports, or to hire individual(s) to critique reports prepared by the Participants.
[3] Revised herein to require a profit-sharing split of 75 percent to ratepayers and 25 percent to stockholders.

[FR Doc. 87-5717 Filed 3-16-87; 8:45 am]
BILLING CODE 6717-01-M

Southeastern Power Administration

Proposed Rate Adjustment, Rate Extension, Public Hearing, and Opportunities for Public Review and Comment; Jim Woodruff Project

AGENCY: Southeastern Power Administration (Southeastern or SEPA), DOE.

ACTION: Notice of proposed rate adjustment and rate extension for the Jim Woodruff Project, notice of public hearing and opportunities for review and comment.

SUMMARY: Southeastern proposes a new Wholesale Power Rate Schedule JW-1-B to replace the existing Rate Schedule JW-1-A. The new rate schedule will be applicable to SEPA power sold to existing preference customers in the Florida Power Corporation service area. Southeastern also proposes to extend Wholesale Power Schedule JW-2-B, which is applicable to SEPA power sold to Florida Power Corporation.

Opportunities will be available for interested persons to review the present rates, the proposed new rate, and the supporting studies, to participate in a hearing and to submit written comments. Southeastern will evaluate all comments received in this process.

DATES: Written comments are due on or before June 15, 1987. A public information and public comment forum will be held in Tallahassee, Florida, on April 16, 1987. Persons desiring to speak at the forum must notify Southeastern at least 7 days before the forum is scheduled so that a list of forum participants can be prepared. Others present may speak if time permits. Persons desiring to attend the forum should notify Southeastern at least 7 days before the forum is scheduled. If southeastern has not been notified by close of business on April 9, 1987, that at least one person intends to be present at the forum, the forum will be automatically canceled with no further notice.

ADDRESSES: Five copies of written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635. The public comment forum will begin at 10 a.m. on April 16, 1987, in the Grand Jury Room of the U.S. Courthouse, 110 East Park Avenue, Tallahassee, Florida 32301.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Jr., Director, Division of Fiscal Operations, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635. (404) 283-9911.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission by order issued January 10, 1983, in Docket No. EF82-3031-000, confirmed and approved Wholesale Power Rate Schedules JW-1-A and JW-2-B applicable to Jim Woodruff Project's power for a period ending August 19, 1987.

Discussion

Existing rate schedules are supported by a March 1982 repayment study and other supporting data all of which are contained in FERC Docket EF82-3031-000. A repayment study prepared in March of 1987 shows that the existing rates are not adequate to recover the costs of the project within the repayment period. Additionally, a revised repayment study with a $503,000 revenue increase in each future year demonstrates that all costs are paid within their repayment life. Therefore, Southeastern is proposing to raise the rates to the preference customers to a level which will recover the additional $503,000.

In the proposed Rate Schedule JW-1-B, the capacity charge has been increased from $2.00 per kilowatt per month to $2.70 per kilowatt of monthly billing demand, and the energy charge has been increased from 6.0 mills to 8.0 mills per kilowatt-hour. The rate to the Florida Power Corporation was not increased because Rate Schedule JW-2-B includes rates which are tied to Florida Power Corporation cost of power. Southeastern proposes that this new rate and the extended rate remain in effect from August 20, 1987, until August 19, 1992.

In developing the rate adjustment, Southeastern considered revenue requirements as determined by the March 1987 system repayment studies. The studies are available for examination at the Samuel Elbert Building, Elberton, Georgia 30635, as is the 1982 repayment study and the proposed Rate Schedule.

Issued in Elberton, Georgia, March 2, 1987.

Harry C. Geisinger,

Administrator.

[FR Doc. 87-5721 Filed 3-16-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3169-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Patricia Minami, (202) 382-2712 (FTS 382-2712) or Jackie Rivers, (202) 382-2740 (FTS 382-2740).

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: NSPS for Glass Manufacturing Plants (EPA ICR No. 1131). (Revision of a currently approved collection.)

Abstract: Glass manufacturing plants notify EPA of construction; of each modification, startup, shutdown, and malfunction; and of each performance test, reporting the results. Also, they record and maintain all test data and calculations, and report periods of excess emissions (opacity) semiannually. The States and/or EPA use the data to ensure compliance with the standards, to target inspections, and, when necessary, to submit as evidence in court.

Respondents: Owners/operators of glass manufacturing plants.

Estimated Annual Burden: 2150 hours.

Title: NSPS for Synthetic Fiber Production Facilities (EPA ICR No. 1156). (Extension of an existing collection.)

Abstract: Synthetic fiber production facilities notify EPA of construction; of each modification, startup, shutdown, and malfunction; and of each performance test, reporting the results. Also, they record and maintain (a) data from all tests and the continuous monitoring system, and (b) data on any startup, shutdown, or malfunction in the operation of the affected facility, the controls, or the monitoring systems. Facilities also report periods of excess

VOC emissions semiannually. The States and/or EPA use this information to ensure compliance with the standards, to target inspections, and, when necessary, to submit as evidence in court.

Respondents: Owners or operators of synthetic fiber production facilities.

Estimated Annual Burden: 1667 hours.

Office of Research and Development

Title: EPA Performance Audit Program for Evaluation of Ambient and Source Monitoring (EPA ICR No. 0865). (Extension of a currently approved collection.)

Abstract. To assess trends in air quality and to improve existing measurement techniques and regulations, EPA uses data from certain laboratories that measure ambient air samples. To determine the quality of this data, EPA occasionally audits these facilities using blind samples that the respondents analyze. EPA then compares the results of their analyses with the true values.

Respondents: Organizations (a) operating State and Local Air Monitoring System (SLAMS) sites and/or (b) doing compliance tests for SO_2, NO_x and the sulfur content of coal; others on a voluntary basis.

Estimated Annual Burden: 4500 hours.

* * * * *

Agency PRA Clearance Requests Completed by OMB

EPA ICR No. 0116, Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program, was approved 2/1/87 (OMB No. 2060-0060; expires 2/29/90).

EPA ICR No. 0180, Emission Recall Audit Program Owner Questionnaire, was approved 2/1/87 (OMB No. 2060-0046; expires 2/29/90).

EPA ICR No. 0282, Emission Defect Information Report/Records, was approved 2/1/87 (OMB No. 2060-0048; expires 2/29/90).

EPA ICR No. 0916, Annual Updates to National Emission Data System and Hazardous and Trace Emission System, was approved 2/1/87 (OMB No. 2060-0088; expires 2/29/90).

EPA ICR No. 1151, Primary Nonferrous Smelter Order, was approved 2/1/87 (OMB No. 2060-0051; expires 12/31/88).

EPA ICR No. 1191, National Survey of Pesticides in Drinking Water Wells, was approved 2/17/87 (OMN No. 2040-0107; expires 9/30/87).

* * * * *

Comments on the abstracts in this notice may be sent to:

Patricia Minami, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street, SW, Washington, DC 20460.

and

Wayne Leiss, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, DC 20503

Dated: March 11, 1987.

Daniel J. Fiorino,

Director, Information and Regulatory Systems Division.

[FR Doc. 87-5685 Filed 3-16-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-36133A; FRL-3170-6]

Pesticide Products; Redesignation of Formaldehyde and Paraformaldehyde Inert Ingredients; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Policy; Extension of Comment Period.

SUMMARY: EPA is extending the comment period on its proposed new policy for redesignating formaldehyde and paraformaldehyde as inert ingredients.

DATE: New comment period extends to April 16, 1987.

ADDRESS:

Comments should be sent, in triplicate if possible, by mail to: Information Service Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, Crystal Mall, Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

All comments should bear the identifying notation OPP-36133A.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236, at the Virginia address given above from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

Ruth Douglas, Registration Division (TS-767C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 711, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-7470).

SUPPLEMENTARY INFORMATION: In the Federal Register of January 5, 1987 (52 FR 321), EPA announced its conclusion that formaldehyde and paraformaldehyde are active ingredients when used as preservatives in pesticide formulations. Because of comments received and the controversial nature of the chemicals and the proposed new policy change, EPA is extending the comment period on this matter from March 5, 1987, to April 16, 1987.

Dated: March 10, 1987.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 87-5800 Filed 3-16-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3170-3]

National Response Team; Hazardous Materials Emergency Planning Guide (Hazmat Planning Guide)

AGENCY: National Response Team, EPA.

ACTION: Notice of availability of guidance.

SUMMARY: The National Response Team (NRT) announces the availability of the "Hazardous Materials Emergency Planning Guide" (Hazmat Planning Guide) being publisheed under NRT planning and coordination authorities (40 CFR 300.32) and pursuant to requirements of Title III, section 303(f) of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Title III of SARA, also known as the Emergency Planning and Community Right-to-Know Act of 1986, requires the NRT to publish guidance documents by March 17, 1987 for the preparation and implementation of emergency plans related to extremely hazardous substances. It is also intended to be of value to communities planning for general hazardous materials incidents.

This guide replaces the NRT's proposed "Hazardous Materials Emergency Planning Guide" issued for review and comment in November 1986. (A notice of availability of the proposed

guide appeared in December 2, 1986 Federal Register.)

ADDRESSES: All parties that received a copy of the June 30, 1986 draft guide for review will be sent a copy of the March 1987 version. Additionally, parties that ordered and received the November 1986 proposed guide through the address listed in the December 2, 1986 Federal Register will be sent a copy of the March 1987 version. Those ordering the November 1986 proposed guide by telephone will not automatically receive the March 1987 version.

Interested parties should write the following address to receive a copy: HAZMAT Planning Guide (WH-562A), 401 M Street, SW., Washington, DC 20460.

There is no charge for the guide. Please allow approximately three weeks for delivery.

FOR FURTHER INFORMATION CONTACT: Requests for the guide should be sent in writing to the above address rather than being made by telephone to ensure parties are placed on the central distribution list for automatically receiving possible future supplements to the guide. Questions of a substantive nature may be referred to agency headquarters and regional offices as follows:

John Gustafson, U.S. Environmental Protection Agency, Telephone: 1-800-535-0202 or 202/479-2449 in Washington, D.C. and Alaska. (Regional office telephone numbers can be obtained from the above 800 number.)

Karen Sagett, Federal Emergency Management Agency, Telephone: 202/646-4648.

Jim Cumming, U.S. Coast Guard, Telephone: 202/267-0442.

Vallary Sandstrom, Research and Special Programs Administration, Department of Transportation, Telephone: 202/366-4492.

E. Kent Gray, Agency for Toxic Substances and Disease Registry, Department of Health and Human Services, Telephone: 404/452-4100.

Lou Polito, Occupational Safety and Health Administration, Department of Labor, Telephone: 202/523-7056.

SUPPLEMENTARY INFORMATION: The NRT is designated by the National Oil and Hazardous Substances Contingency Plan (NCP) as the body responsible for national preparedness, planning and coordination of response actions related to oil discharges and hazardous substance releases (40 CFR 300.32). It is composed of 14 Federal agencies having major responsibilities in environmental, transportation, emergency management, worker safety, and public health areas. Member NRT agencies are the Environmental Protection Agency, Department of Transportation/U.S. Coast Guard, Department of Commerce, Department of the Interior, Department of Agriculture, Department of Defense, Department of State, Department of Justice, Department of Transportation/Research and Special Programs Administration, Department of Health and Human Services, Federal Emergency Management Agency, Department of Labor and Nuclear Regulatory Commission.

The purpose of the "Hazmat Planning Guide" is to assist local communities in planning for hazardous materials incidents. The guide was developed cooperatively by NRT member agencies. It replaces the Federal Emergency Management Agency's "Planning guide and Checklist for Hazardous Materials Contigency Plans" (known as FEMA-10), as well as general portions of the Environmental Protection Agency's "Chemical Emergency Preparedness Program (CEPP) Interim Guidance." CEPP technical materials including site-specific guidance, criteria for identifying extremely hazardous substances, a list of extremely hazardous substances and chemical profiles for each substance will be published separately.

The Superfund Amendments and Reauthorization Act of 1986 (SARA) became law on October 17, 1986. SARA includes the Emergency Planning and Community Right-to-Know Act separately as Title III. Title III requires that emergency plans be developed locally focusing on facilities producing, using, or storing extremely hazardous substances in excess of certain threshold planning quantities. The initial list of extremely hazardous substances was published interim final in the Federal Register on November 17, 1986. (A final rule is expected to be published on or about April 17, 1987).

To manage the preparation, implementation, and review of emergency plans, Title III requires the establishment of an organizational structure at the State/local level. More specifically, the Governor of each State must appoint a State emergency response commission by April 17, 1987. Each State's emergency response commission, in turn, designates emergency planning districts (which could be existing political subdivisions or multijurisdictional planning organizations), appoints a local emergency planning committees for each district, and supervises and coordinates their activities. Local emergency planning committees are required to complete emergency plans within two years after enactment of Title III (October 17, 1988).

Local emergency plans must identify facilities within the emergency planning district that are subject to Title III requirements, as well as identify routes likely to be used for transportation of substances on the list of extremely hazardous substances. The plans are required to include methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any releases of such substances. Title III also indicates other plan requirements related to emergency coordinators, notification, methods for determining the occurrence of a release, availability of emergency equipment and facilities, evacuation, training, and exercises. These elements are all described in the March 1987 guide.

Drafts of the guide have received extensive review. On June 30, 1986 a draft was distributed for review and comment to more than 400 Federal, State, and local government officials, associations, industry representatives, and environmental groups. After considering comments from this review, a draft was proposed for comment in November 1986. The comment period ended on January 15, 1987. The final version of the guide considers detailed as well as general suggestions made by reviewers. Comments on the November draft of the guide were generally very favorable. Major recommendations were that more information be provided on conducting a hazards analysis and on the planning provisions of Title III. As a result, the body of the document includes more discussion and/or examples concerning hazards analysis and a new appendix (Appendix A) has been added to address the Emergency Planning and Community-Right-to-Know Act of 1986 in greater detail.

James L. Makris,

Environmental Protection Agency Chairman, National Response Team.

Captain Robert L. Storch,

U.S. Coast Guard, Vice Chairman, National Response Team.

[FR Doc. 87-5799 Filed 3-16-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180725; FRL-3170-5]

Receipt of Applications for Emergency Exemptions From Washington and Idaho To Use Dinoseb; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Receipt.

SUMMARY: EPA has received specific exemption requests from the Washington and Idaho Departments of Agriculture (hereafter referred to as "Washington," "Idaho," of collectively as "Applicants") to use dinoseb (CAS 88-85-7) on peas, chickpeas, and lentils to control broadleaf weeds. EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and, time permitting, to solicit public comment before making the decision whether to grant the exemptions.

DATE: Comments must be received on or before March 27, 1987.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180725" should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to:

Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed exempt in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not continue Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Donald R. Stubbs, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20460.

Office location and telephone number:

Rm. 716, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7700).

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State or Federal agency from any provision of FIFRA if he determines that emergency conditions exist which require such exemption. The applicable EPA regulations for emergency exemptions are set forth at 40. CFR Part 166.

The Departments of Agriculture for the states of Washington and Idaho, by letters received February 5, 1987, and February 6, 1987, respectively, have requested the Administrator to issue specific exemptions for the use of dinoseb on peas, chickpeas, and lentils to control broadleaf weeds in Washington and Idaho.

On October 7, 1986, EPA suspended all registrations of dinoseb products (51 FR 36634, October 14, 1986). The basis for the suspension of all dinoseb registrations was significant risk of developmental toxicity and other adverse health effects to applicators and other populations exposed to dinoseb.

Subsequently four registrants submitted requests for an expedited suspension hearing on the question of whether or not sale, distribution, or use of dinoseb would pose an imminent hazard during the time required to conduct a cancellation hearing. These registrants withdrew their expedited hearing requests on the question of imminent hazard on October 30, 1986, resulting in the immediate entry, pursuant to the terms of the Agency's October 7 decision, of a final order suspending the registrations of their dinoseb products during the pendency of the cancellation hearing. The Applicants' specific exemption requests are therefore subject to EPA's Subpart D regulations, 40 CFR 164.130 to 164.133, in addition to the regulations at 40 CFR Part 166 governing the issuance of exemptions under section 18. Subpart D provides that any application for a registration of a pesticide use that has been suspended or cancelled shall be considered a petition for reconsideration of the prior suspension or cancellation order. The Administrator will determine that reconsideration is warranted if among other things he finds that the Applicant has presented substantial new evidence which may materially affect the prior suspension or cancellation order (40 CFR 164.131(c)). If the Administrator finds that the substantial new evidence test in 40 CFR 164.131 is met, the Subpart D rules require a formal hearing to determine whether a modification of the suspension or cancellation order is justified (40 CFR 164.131(c)).

The administrator has determined that substantial new evidence does exist in connection with the specific exemption requests to use of dinoseb on dry peas, lentils, and chickpeas in Washington and Idaho. Accordingly, a hearing to reconsider whether to modify the prior suspension order to permit the use of dinoseb on dry peas, chickpeas, and lentils to control broadleaf weeds in Washington and Idaho has been initiated as announced in the **Federal Register** of February 18, 1987 (52 FR 4963). Although the emergency exemption application submitted by the state of Washington requested dinoseb be approved for use on peas (this includes green peas as well as dry peas), the application did not include substantial new evidence concerning the green pea use beyond that available to the Agency at the time of the final suspension decision and the Administrator did not include green peas in the Subpart D hearing (52 FR 4965 n.1).

Should the Administrator decide to lift the suspension of certain dinoseb regristrations, the Agency would then determine whether and under what terms and conditions dinoseb products might be used in accordance with the terms of the Administrator's order and 40 CFR Part 166.

II. Emergency Condition

Idaho states that there is no federally registered premergent herbicide suitable for broadleaf weed control on lentils and made the following additional assertions. Metribuzin is registered for pre-emergence application for suppression of certain broadleaf weeds; however, according to Idaho, a serious gap in weed control exists, since metribuzin does not control the entire broadleaf spectrum found in the lentil growing region of northern Idaho and certain weed species can escape control to compete with pea, lentil and chickpea seedlings. Additionally, metribuzin is registered at low application rates in order to prevent crop injury and cannot be used on light soils, clay knobs, or shallow seeding conditions. Flucloralin (Basalin), MPCA, and trifluralin (Treflan) are registered alternatives for some uses. Basalin does not control problem broadleaf weeds which occur in lentils and generally must be applied in combination with other herbicides for broadleaf weed control on peas. Trifluralin is primarily effective against grass species and requires incorporation. MCPA is only approved for use on peas and must be applied after peas are four to six inches tall, after problem broadleaf weeds have had an opportunity to germinate and compete with seedlings. According to Idaho, cultivation practices cannot provide effective weed control during

germination and early seedlings growth stages.

Washington states that registered alternatives for broadleaf weed control in peas (metribuzin, MCPB, MCPA, and bentazon) are not suitable for use under the growing conditions in western Washington and has made the following additional assertions. Metribuzin is not registered for use in western Washington and has been shown to cause unacceptable crop damage to both peas and lentils in eastern Washington. Bentazon has been shown to be temperature dependent and does not perform in cool Washington spring temperatures. MCPB and MCPA injure peas and show inadequate efficacy. No broadleaf weed herbicides other than metribuzin are registered on lentils. Washington states that shifting to row cropping so that mechanical weed control could be used is not acceptable because: (1) equipment costs to perform the change would be prohibitive; (2) benefits of grassy weed control from the closed crop canopy top would be lost; and (3) the rolling hills in large areas of eastern Washington are difficult to cultivate and are vulnerable to severe erosion.

Idaho estimates a 25% to 30% yield loss for dry peas, a 35% to 40% yield loss for lentils and a 50% yield loss for chickpeas if dinoseb is not available to control broadleaf weeds. Washington estimates an average 31% yield loss for dry peas, 37% yield loss for lentils and 50% yield loss for chickpeas if dinoseb is not available to control broadleaf weeds.

The Applicants indicate that resulting losses are estimated to be approximately $33 million per year to the producers of dry peas, lentils and chickpeas. By crop, losses are estimated to be $15.1 million to dry pea growers, $16.5 million to lentil growers, and $1.4 million to chickpea growers.

III. Proposed Use

Idaho requested an emergency exemption for peas, lentils, and chick peas from March 15 to June 15, 1987. Washington requested an emergency exemption for peas, lentils, and chick peas from April 1 to June 15, 1987.

Idaho's proposed specific exemption programs involve a single, pre-emergence application of dinoseb at 3 lbs active ingredient per acre in 20 to 30 gallons of water with ground equipment and 5 to 10 gallons of water with aerial equipment for broadleaf weed control. Registered dinoseb products containing three pounds of dinoseb amine per gallon as the active ingredient would be used. A total of 510,000 lbs active ingredient to treat 60,000 acres of lentils, 100,000 acres of peas and 10,000 acres of chickpeas has been requested. Other conditions of use include: (1) All applications would be made by licensed commercial applicators or certified private applicators using their own equipment; (2) closed mixing systems would be required and enclosed cabs for all application equipment; (3) applicators would be required to wear protective clothing while mixing, loading, applying dinoseb or repairing application equipment; (4) field flagging during aerial application would be prohibited; and (5) hand-held spray applications would be prohibited.

Washington's proposed specific exemption programs involve a single, pre-emergence application of dinoseb at 3 lbs active ingredient per acre for broadleaf weed control. Washington is requesting the use of any formulation of dinoseb or its salts registered prior to October 1986 for use on peas, chickpeas, and/or lentils. A total of 885,000 lbs of active ingredient to treat 295,000 acres of peas, lentils and chickpeas (collectively) has been requested. Other conditions of use include: (1) All applications would be by certified applicators only; (2) product would remain enclosed during mixing; (3) all persons would have to wear long-sleeved shirts, long pants, and chemically-resistant gloves when loading or applying dinoseb and when repairing dinoseb-contaminated equipment; (4) field flagmen for aerial application would be prohibited; and (5) use of hand-held sprayers would be prohibited.

IV. Notification and Comment

This notice does not constitute a decision by the Agency on the applications submitted. The Agency's final decision on the specific exemption requests from Washington and Idaho will be based on the outcome of the Subpart D hearings and compliance with the regulations governing section 18.

The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application that proposes any emergency use of a pesticide if such pesticide was the subject of a suspension notice under section 6(c) of FIFRA. The regulations also provide for the opportunity for public comment on the applications (40 CFR 166.24).

An expedited comment period of 10 days is provided to facilitate decision making on the specific exemption requests in the event the Administrator were to lift the suspension of certain dinoseb registrations (40 CFR 164.24(c)).

Accordingly, interested persons may submit written views on the applications for emergency exemption to the Program Management and Support Division at the address given above.

The Agency will review and consider all comments received during the comment period.

Dated: March 10, 1987.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87-5081 Filed 3-16-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Federal-State Joint Board To Meet Tuesday, March 17, 1987; Meeting

March 10, 1987.

The Federal-State Joint Board will hold an Open Meeting on the subject listed below on Tuesday, March 17, 1987, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

Common Carrier—1—Title: Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 86-297, Recommended Decision and Order. Summary: The Federal-State Joint Board will consider whether to adopt a Recommended Decision and Order recommending changes to Part 67 of the Commission's rules to conform the separations rules to the new Uniform System of Accounts, Part 32.

Additional information concerning this meeting may be obtained from Cindy Schonhaut, of the Common Carrier Bureau, telephone number (202) 632-7500.

Issued: March 10, 1987.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-5688 Filed 3-16-87; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Anita L. Levine; et al.

1. The Commission has before it the following mutually exclusive applications for a new AM station:

Applicant, City, and State	File No.	MM Docket No.
A. Anita L. Levine, Frazier Park, CA.	BP-850603AH	87-46
B. Elidia Mooring d/b/a Richgrove Broadcasting, Richgrove, CA.	BP-8650910AI	
C. Mountain Broadcasting Company, Inc., Big Bear Lake, CA.	BP-851018AE	

Applicant, City, and State	File No.	MM Docket No.
D: Linda Ross, Frazier Park, CA	BP-851108AA	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Environmental Impact—C.
2. 307(b)—Modification—All applicants.
3. Contingent Comparative)—All applicants.
4. Ultimate—All applicants.

3. If there is any non-standardized issues(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Sevices, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87-5690 Filed 3-16-87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Citicorp et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 3, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President), 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York, New York; to engage *de novo* in appraisals of real estate and tangible and intangible personal property, including securities, as permitted by § 225.25(b)(13) of the Board's Regulation Y.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *C B & T, Inc.* and First McMinnville Corporation, McMinnville, Tennessee; to engage *de novo* through their subsidiary, Warren Community Development Corporation, McMinnville, Tennessee, in investing in a community development corporation to promote the industrial and community development of McMinnville and Warren Counties, Tennessee, pursuant to § 225.25(b)(6) of the Board's Regulation Y. This activity will be conducted in McMinnville and Warren Counties, Tennessee.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Neosho County Bancshares, Inc.*, Chanute, Kansas; to engage *de novo* in acting as agent in the sale of life, accident and health insurance directly related to extensions of credit by its lending subsidiaries pursuant to § 225.25 (b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 11, 1987

James McAfee,

Associate Secretary of the Board.

[FE Doc. 87-5655 Filed 3-16-87; 8:45 am]

BILLING CODE 6210-01-M

First Jersey National Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 6, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *First Jersey National Corporation*, Jersey City, New Jersey; to acquire 100 percent of the voting shares of Newmarket National Bank, Fort Washington, Pennsylvania, a *de novo* bank.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Chesapeake Bank Corporation*, Chesapeake, Virginia; to acquire 100 percent of the voting shares of American Bank, Newport News, Virginia.

2. *Premier Bankshares Corporation*, Tazewell, Virginia; to acquire 100

percent of the voting shares of The Richlands National Bank, Richlands, Virginia.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. **Farmers Enterprises, Inc.**, Albert, Kansas; to acquire 4.9 percent of the voting shares and 80 percent of the nonvoting shares of Charter West Bank, N.A., Great Bend, Kansas.

Board of Governors of the Federal Reserve System, March 11, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-5656 Filed 3-16-87; 8:45 am]

BILLING CODE 6210-01-M

Security Pacific Co.; Proposal To Underwrite and Deal in Certain Securities to a Limited Extent; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 87-4810) published in the issue for Monday, March 9, 1987, page 7212.

Security Pacific Corporation ("Applicant"), Los Angeles, California, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage through Security Pacific Securities, Inc. ("Company"), Los Angeles, California, or through one or more wholly-owned subsidiaries of Company, in the activities of underwriting and dealing in, to a limited extent, the following securities which are eligible for purchase by banks for their own account but not eligible for banks to underwrite and deal in (hereinafter "ineligible securities"):

(1) Municipal revenue obligations (including certain industrial development bonds);

(2) Mortgage-related securities (obligations secured by, or representing interests in, residential real estate mortgages);

(3) Consumer-receivable-related securities (obligations secured by, or representing an interest in, loans or receivables of a type generally made to or due from consumers) (hereinafter "CRRs").

(4) Commercial paper;

Applicant has applied for approval under § 225.25(b)(16) of Regulation Y (12 CFR 225.25(b)(16)) to engage, *de novo*, through Company in underwriting and dealing in securities and money market instruments that banks are expressly authorized to underwrite and deal in under section 16 of the Glass-Steagall Act (12 U.S.C. 24 Seventh), including U.S. government obligations and general obligations of states and their political subdivisions. The foregoing activities are presently conducted by Applicant's principal banking subsidiary, Security Pacific National Bank and would ultimately be transferred to Company.

Upon approval of the proposal, Company would commence underwriting and dealing in ineligible securities subject to the limitations set forth in the application. The activities would be performed through Company's offices in Los Angeles, serving customers throughout the United States. Company may established offices in other locations as it deems necessary and appropriate.

Section 4(c)(8) of the Bank Holding Company Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board has not previously approved the proposed underwriting and dealing activities for bank holding companies. On December 24, 1986, the Board approved an application under section 4(c)(8) by Bankers Trust New York Corporation to engage in the limited placement of third-party commercial paper with purchasers, even if that activity were deemed to constitute underwriting, subject to conditions. 73 Federal Reserve Bulletin 138 (1987).

Applicant states that the proposed activities are so closely related to banking or managing or controlling banks as to be a proper incident thereto on the basis of its belief that banks engage in activities that it believes are functionally and operationally similar to those involved in the application, including underwriting and dealing in eligible municipal and mortgage-related securities as well as money market instruments; making secured and unsecured consumer loans; making short-term loans and discounting commercial paper; making, buying and selling loans; and in assisting clients in placing commercial paper.

In determining whether a particular activity is a proper incident to banking, the Board considers whether the performance of the activity by an affiliate of a holding company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest or unsound banking practices. Applicant maintains that permitting bank holding companies to engage in the proposed activities would enable holding companies to provide increased services to customers; would be procompetitive; and would strengthen the safety and soundness of bank holding companies by enabling them to improve their liquidity, competitive position and income potential. In addition, Applicant believes the proposal would not result in adverse effects.

The application also presents issues under section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as Security Pacific National Bank, with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. Applicant states that it would not be "engaged principally" in such activities on the basis of restrictions that would limit the amount of the proposed activity relative to the total business conducted by Company and relative to the total market in such activity.

During any two year period, the Company's underwriting and dealing in ineligible securities ("ineligible activities") will account for no more than 15 percent of its total activities, measured by compliance with two of the three indicia set forth below:

(1) The dollar volume of underwriting commitments (or underwriting or primary sales if larger) and dealer sales attributable to ineligible activities, compared with total dollar volume of all of Company's activities;

(2) The average assets acquired in connection with ineligible activities, compared with the average assets acquired in connection with all of Company's activities; and

(3) The gross income (*i.e.*, income before expenses and taxes) from ineligible activities, compared with the gross income from all of Company's activities.

In addition, Applicant will limit Company's involvement in the market for ineligible activities through the following restrictions:

(1) The volume of all municipal revenue securities underwritten by Company in any one calendar year shall not exceed 3 percent of the total amount of such securities underwritten domestically by all firms during the previous calendar year.

(2) The aggregate volume of all mortgage-related securities and CRRs underwritten by Company in any one calendar year shall not exceed 3 percent

of the total aggregate amount of such securities underwritten domestically by all firms during the previous calendar year.

(3) The amount of all municipal revenue securities held by Company for dealing at any one time shall not exceed 3 percent of the total amount of such securities underwritten domestically by all firms during the previous calendar year.

(4) The aggregagte amount of all mortgage-related securities and CRRs held by Company for dealing at any one time shall not exceed 3 percent of the total aggregate amount of such securities underwritten domestically by all firms during the previous calendar year.

(5) That total amount of commercial paper outstanding on any day underwritten by Company shall not exceed 10 percent of the average daily amount of dealer-placed commercial paper outstanding during the prior four calendar quarters (Applicant would reduce this limit from 10 percent to 5 percent if the Board determines that such a reduction in market share is legally required).

(6) That total amount of commercial paper held in inventory by Company on any day shall not exceed 10 percent of the average daily amount of dealer-placed commercial paper outstanding during the prior four calendar quarters. (Applicant would reduce this limit from 10 percent to 5 percent if the Board determines that such a reduction in market share is legally required).

In addition, Applicant has stated that it would be prepared to conduct all of the proposed activities in a single corporation should the Board decide that the activities of Company and one or more of its subsidiaries may not be viewed on a consolidated basis for section 20 purposes.

In publishing Security Pacific's proposal for comment, the Board does not take any position on the consistency or inconsistency of the proposal with the Glass-Steagall Act or the Bank Holding Company Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal is consistent or inconsistent with the Glass-Steagall Act or that the proposal meets or is likely to meet the standards of the Bank Holding Company Act. The Board previously published for comment applications by other bank holding companies to underwrite the deal in the proposed ineligible securities, *e.g.*, Citicorp (50 FR 20847), J.P. Morgan & Co. Incorporated (50 FR 41025), Bankers Trust New York Corporation (51 FR 16590), and Chemical New York Corporation (51 FR 42300). The Board held a hearing on certain issues presented by the application of Citicorp, J.P. Morgan and Bankers Trust on February 3, 1987.

Comments are requested on the scope of activity permitted by the phrase "engaged principally" under the Glass-Steagall Act, including whether the phrased contemplates the type of limitations involved in this application, which are based on Applicant's market share and on a percentage of the affiliate's total business activities. The Board also seeks comment on whether the term "engaged principally" in section 20 would preclude a member bank affiliate from engaging in activities restricted by this section on a substantial and regular or non-incidental basis and without regard to the amount of other activities conducted by the affiliate.

Comments are also requested on whether the proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto," and whether the proposal as a whole can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resource, decreased or unfair competition, conflicts of interests, or unsound banking practices." In this regard, comments are requested on whether conditions similar to those adopted in the Board's December 24, 1986, order approving the commercial paper activity proposed by Bankers Trust New York Corporation, or other conditions, should be established to address possible adverse effects.

Upon the expiration of the public comment period, depending upon the comments received, the Board may wish first to consider the legal issues presented by the application under the Glass-Steagall Act in order to determine whether there is a legal basis for considering whether the activities could be premitted for a bank holding company under the Bank Holding Company Act.

Any request for a hearing on these questions must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Any comments or requests for hearing should be submitted in writting and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than April 10, 1987.

Board of Governors of the Federal Reserve System, March 11, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-5654 Filed 3-16-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Standard Quality Feeds; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Standard Quality Feeds. The NADA provides for use of "Standard's Turkey Starter Base Mix Medicated" containing 0.325 percent amprolium for making complete Type C turkey feeds. The firm requested the withdrawal of approval.

EFFECTIVE DATE: March 27, 1987.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3184.

SUPPLEMENTARY INFORMATION: Standard Quality Feeds, P.O. Box 3844, Omaha, NE 68103, is sponsor of NADA 101-778, which provides for use of "Standard's Turkey Starter Base Mix Medicated" containing 0.325 percent amprolium to make complete Type C turkey feeds. The NADA was originally approved by letter on November 5, 1975.

By letter dated November 12, 1986, the sponsor requested withdrawal of approval because the product is not being manufactured or marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115

Withdrawal of approval of applications (21 CFR 514.115), notice is given that approval of NADA 101-778 and all supplements thereto is hereby withdrawn, effective March 27, 1987.

Dated: March 9, 1987.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 87-5641 Filed 3-16-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87F-0038]

Pilot Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Pilot Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of trisodium sulfosuccinate as an adjuvant in sodium dodecylbenzene sulfonate.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 5B3868) has been filed by the Pilot Chemical Co., 11756 Burke St., Santa Fe Springs, CA 90670, proposing that § 173.315 *Chemicals used in washing or to assist in the lye peeling of fruits and vegetables* (21 CFR 173.315) be amended to provide for the safe use of trisodium sulfosuccinate at levels not to exceed 4 percent as a adjuvant in sodium dodecylbenzene sulfonate.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: March 6, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-5642 Filed 3-16-87; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Hearing: Reconsideration of Disapproval of a Maryland State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of Hearing.

SUMMARY: This notice announces an administrative hearing on April 22, 1987 in Philadelphia, Pennsylvania to reconsider our decision to disapprove Maryland State Plan Amendment 86-12.

Closing Date: Requests to participate in the hearing as a party must be received by the Docket Clerk April 1, 1987.

FOR FURTHER INFORMATION, CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207; Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove a Maryland State Plan Amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Maryland SPA 86-12 violates section 1903(a)(7) and 1902(a)(4) of the Social Security Act.

Section 1903(a)(7) of the Act provides for a 50 percent FFP payment rate for necessary adminstrative expenses incurred by a State in operating its Medicaid program. The expenses eligible for FFP are those that the Secretary finds necessary for the proper and efficient administration of the State plan. Section 1902(a)(4) of the Act requires State plans to provide for the methods of administration that are necessary (as determined by the Secretary) for the proper and efficient operation of the plan. Traditionally, qualified administrative costs are costs that relate to necessary incidental activities which support the efficient operation of the State Medicaid plan such as costs of the Medicaid Management Information System, salaries for eligibility workers, and rent, utilities, and other costs associated with buildings used for the operation of the Medicaid program.

The services covered by SPA 86-12 are as follows:

1. Facilitating access to health services.

2. Assisting clients in determining how their health problems affect other areas of their lives.

3. Helping clients to understand and follow instructions given by medical professionals.

4. Arranging for child care so that a parent can receive necessary medical attention.

HCFA has determined that these activities are not incidental to program operations and adminstrative in nature and therefore, violate sections 1903(a)(7) and 1902(a)(4) of the Social Security Act.

The notice to Maryland announcing an administrative hearing to reconsider our disapproval of its State plan amendment reads as follows:

Ms. Adele Wilzack, R.N., M.S.,
Secretary, Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, Maryland 21201

Dear Ms. Wilzack: This is to advise you that your request for reconsideration of the decision to disapprove Marylsnd State Plan Amendment (SPA) 86-12 was received on February 9, 1987.

Maryland SPA 86-12 provides that the costs attributable to various activities performed by social service personnel will be designated as administrative costs under the State Medicaid plan. As such, the State would be entitled to additional Federal financial participation (FFP) payments under Medicaid. Previously, the State has financed these social work type activities out of title XX funds or general State funds.

You have requested a reconsideration of whether this plan amendment conforms to the requirements for approval under the Social Security Act and pertinent Federal regulations. The issue to be considered at the hearing is whether this amendment meets the statutory provisions for administrative costs under sections 1903(a)(7) and 1902(a)(4) of the Social Security Act.

"I am scheduling a hearing on your request to be held on April 22, 1987 at 10:00 a.m. in

Room 5020, 3535 Market Street, Philadelphia, Pennsylvania. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Lawrence Ageloff as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594–8261.

Sincerely,

William L. Roper,

Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: March 5, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 87–5678 Filed 3–16–87; 8:45 am]

BILLING CODE 4120-00-M

Medicaid Program; Hearing: Reconsideration of Disapproval of a Minnesota State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on April 29, 1987 in Chicago, Illinois to reconsider our decision to disapprove Minnesota State Plan Amendment 84–27.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk April 1, 1987.

FOR FURTHER INFORMATION, CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594–8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove a Minnesota State Plan Amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Minnesota SPA 84–27 violates section 1902(a)(10)(A), 1902(a)(10)(C) and 1902(f) of the Social Security Act and Federal regulations at 42 CFR 435.711, 435.121, and 435.732. Minnesota SPA 84–27 relates to the methods and standards the State applies in determining whether an individual's resources are within Medicaid program limits. In general, the Medicaid statute requires States to use the eligibility rules of the Supplemental Security Income (SSI) program in determining Medicaid eligibility of all aged, blind, or disabled individuals and to use the rules of the Aid to Families with Dependent Children (AFDC) program in determining Medicaid eligibility of AFDC-related individuals. Sections 1902(a)(10) (A) and (C) of the Social Security Act establish the basic groups of individuals whom States may and must cover under their Medicaid programs. The general rule of section 1902(a)(10)(A)(ii) of the Act establishes optional coverage of the categorically needy. Section 1902(a)(10)(C) establishes optional coverage of the medically needy. For the aged, blind and disabled medically needy, section 1902(a)(10)(C)(i)(111) dictates that their eligibility is governed by SSI rules. Section 1902(f) provides a limited exception to this rule by permitting States to use *more restrictive* rules than those of the SSI program for determining the eligibility of the aged, blind and disabled. These more restrictive rules cannot be more restrictive than those used under the State's Medicaid plan which was in effect on January 1, 1972. (Since section 1902(f) only permits States to use more restrictive rules than those of SSI, it does not authorize use of more liberal rules than SSI (even if those rules were in effect on January 1, 1972.) States are authorized to provide Medicaid eligibility as optional categorically needy to recipients of State supplementary payments which meet certain requirements. See section 1902(a)(10)(A)(ii)(IV) and 42 CFR 435.230. Minnesota has elected to exercise the options under sections 1902(f) (to be more restrictive than SSI); 1902(a)(10)(A)(ii)(IV) (to provide Medicaid to State supplementary payment recipients), and 1902(a)(10)(C) (to cover the medically needy). For aged, blind and disabled individuals there are certain exceptions to the general rules which permit States to use rules more restrictive than SSI and in certain limited circumstances to use rules more liberal than SSI. (Sections 1902(f) and 1902(a)(10)(A)(ii)(IV).) Minnesota elects both options. (42 CFR 435.121.)

The first exception to the general requirement that a State use SSI rules, permits States to employ eligibility criteria more restrictive than SSI program rules but no more restrictive than those applied under the State's January 1, 1972 approved medical assistance plan. Thus, under this option, the State's eligibility rules for aged, blind and disabled individuals are bound by the parameters of SSI as the most liberal rules the State may apply and by the State's own eligibility rules used on January 1, 1972 as the most restrictive rules the State may apply. The State may employ rules which fall anywhere in between the SSI/1972 parameters.

The second option which authorizes a State to employ certain rules more liberal than SSI depends on whether a State elects to provide Medicaid to individuals to whom the State makes an optional State supplementary payment (SSP) *and* whether the SSI program meets Federal requirements (sections 1902(a)(10)(A)(ii)(IV), 1905(j) and regulations at 42 CFR 435.121 and 435.230). By law an SSP is a payment, which among other things, is paid by the State to an individual who is receiving SSI or who would "but for income" be eligible to receive SSI.

Thus, under an SSP which relates to Medicaid eligibility, the only financial rules which may be more liberal than SSI program rules are those relating to income. There is no authority to employ more liberal resource rules under an SSP for Medicaid purposes.

Therefore, HCFA disapproved Minnesota's resource standards to the extent they apply to the optional categorically needy as they are more liberal than either the SSI or the AFDC programs permit.

Supplement 2 to Attachment 2.6–A page 2 lists property which is excluded from countable resources in determining whether an individual's resources are below the resource eligibility standard. The State proposes to exclude the following items:

One automobile regardless of value. The State's proposal is more liberal than AFDC policies which exclude one automobile in which equity value does not exced $1,500. HCFA has determined the provision violates section 1902(a)(10)(A) and 1902(a)(10)(C)(i)(iii) of the Act and regulations at 42 CFR 435.711 which do not permit the State to use more liberal rules.

Household goods. The policy is more liberal than SSI policy which excludes household goods and personal effects only up to $2,000. In that the State's policy is more liberal than SSI because it does not impose a limit on the value of household goods which may be excluded. HCFA has determined it violates sections 1902(a)(10) (A) and (C) of the Act and is not authorized by regulations at 42 CFR 435.121. Although the provision is in the approved plan it affects the categorically needy and therefore is not protected by the moratorium provisions of Section 2373(c) of the Deficit Reduction Act of 1984 (DRA).

Real property which produces a net income. This provision is more liberal than both SSI and AFDC rules. There is no provision in the AFDC program which would permit such a disregard. While SSI does provide for exclusion of income producing property, the individual's equity in the property must not exceed $6,000 and the property must produce a 6 percent return on equity. As such, the Minnesota proposal is more liberal than SSI and AFDC policies and HCFA has determined it violates sections 1902(a)(10) (A) and (C) of the Act and regulations at 42 CFR 435.121 and 435.711. Further, the State's proposed rule is not in the State's approved plan and is therefore not protected by the moratorium provisions of DRA.

Real property which an individual is making an effort to sell. This provision is more liberal than both SSI and AFDC rules. The SSI program does not exclude resources merely because its owner is attempting to sell the property. Rather SSI counts the current market value of such property. While the AFDC program rules do provide for exclusion of property which an individual is making a good faith effort to sell, the AFDC exclusion is limited to 6 months, with a possible 3 month extension. the Minnesota exclusion is not time limited. As such, HCFA has determined Minnesota's proposal is more liberal than SSI and AFDC program rules and violates section 1902(a)(10) (A) and (C) of the Act and regulations at 42 CFR 435.121 and 435.711. Additionally, this provision is not contained in the State's approved plan and cannot be protected under the moratorium provisions of DRA.

Nonhomestead real property the value of which when combined with the equity in the home does not exceed $15,000. There is no provision in SSI or AFDC program rules to exclude such property. As such, Minnesota's policy is more liberal than SSI and AFDC rules and HCFA has determined it violates sections 1902(a)(10) (A) and (C) of the Act and regulations at 42 CFR 435.121 and 435.711. Although this provision is in the plan it affects the State's categorically needy population and cannot be protected under the moratorium provisions of DRA.

HCFA has determined Supplement 2 to Attachment 2.6–A, page 2 also violates Federal requirements because it does not provide for a resource exclusion which it must apply. The State's 1972 plan provided that prepaid burial contracts not in excess of $750 per person were excluded from countable resources. That provision is more restrictive than SSI's current treatment of these contracts. Because the State's current proposals do not exempt $750 in a prepaid burial contract; however, this aspect of the proposal is more restrictive than the rules employed on January 1, 1972 and HCFA has determined it violates section 1902(f) of the Act and regulations at 42 CFR 435.121.

Supplement 2 to Attachment 2.6–A, page 1 lists the State's proposed resource standards. Although the Supplement indicates it applies to the medically needy, Minnesota defines the medically needy as individuals who do not receive cash assistance. By Minnesota's definition, the resource levels would apply both to the medically needy and categorically needy population.

While the resource levels are acceptable for the medically needy population (as specified in regulations at 42 CFR Part 435 Subpart D), they are not acceptable for the categorically needy population. With respect to the categorically needy groups, the proposed resource levels exceed the resource levels applied under the cash assistance programs. As such, to the extent the medically needy resource levels apply to the categorically needy population, HCFA has determined the resource levels violate section 1902(a)(10)(A) and regulations at 42 CFR 435.121 and 435.732, which do not permit rules more liberal than the cash assistance program.

The State believes that the provisions of SPA 84–27 are protected by the moratorium provisions of the Deficit Reduction Act of 1984. Under the moratorium the Secretary may not take any sanctions against States relating to those less restrictive (more liberal) provisions applicable to the medically needy which are contained in the State's plan. HCFA does not believe the moratorium applies for two separate reasons. Most of the disapprovable provisions of SPA 8427 are not a part of the State's approved plan and are thus not governed by the moratorium. Although there are some provisions of the amendment which are included in the State's current State plan, these provisions involve the categorically needy as well as the medically needy. The moratorium is limited to provisions dealing with the medically needy.

The notice to Minnesota announcing an administrative hearing to reconsider our disapproval of its State plan amendment reads as follows:

Mr. Leonard W. Levine,
Commissioner, Minnesota Department of Public Welfare, Centennial Office Building, 658 Cedar Street, St. Paul, Minnesota 55155.

Dear Mr. Levine: This is to advise you that your request for reconsideration of the decision to disapprove Minnesota State Plan Amendment (SPA) 84–27 was received on February 10, 1987. Minnesota SPA 84–27 relates to the methods and standards the State applies in determining whether an individual's resources are within Medicaid program limits.

You have requested a reconsideration of whether this plan amendment conforms to the requirements for approval under the Social Security Act and pertinent Federal regulations. The issues to be considered at the hearing are: 1) whether property which is excluded from countable resources in determining whether an individual's resources are below the resource eligibility standard violates section 1902(a)(10)(A), 1902(a)(10)(C), and 1902(f) of the Social Security Act and Federal regulations at 42 CFR 435.711, 435.121 and 435.732, and 2) whether the plan amendment is protected by the Deficit Reduction Act of 1984.

I am scheduling a hearing on your request to be held on April 29, 1987 at 10:00 a.m. in the 8th Floor Conference Room, 175 W. Jackson Blvd., Suite A–835, Chicago, Illinois. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594–8261.

Sincerely,

William L. Roper,

Administrator.

(Sec. 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: March 6, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 87-5680 Filed 3-16-87; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

National Heart, Lung, and Blood Advisory Council and Its Research Subcommittee and Manpower Subcommittee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, May 21-22, 1987, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892. In addition, the Research Subcommittee and the Manpower Subcommittee of the above Council will meet on May 20, 1987, at 1 p.m. and 8 p.m. respectively, in Building 31, Conference Rooms 9 and 10.

The Council meeting will be open to the public on May 21 from 9 a.m. to approximately 3:30 p.m. for discussion of program polices and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in Section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., Section 10(d) of Pub. L. 92-463, the Council meeting will be closed to the public from approximately 3:30 p.m. on May 21 to adjournment on May 22 for the review, discussion, and evaluation of individual grant applications. The meetings of the Research Subcommittee and the Manpower Subcommittee of the above Council on May 20, will be closed from 1 p.m. and 8 p.m. respectively, to adjournment for the review, discussion, and evaluation of individual grant applications.

These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communciations and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496-4236, will provide a summary of the meeting and a roster of the Council members.

Dr. David M. Monsees, Jr., Executive Secretary of the Council, Westwood Building, Room 7A-15, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496-7548, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: March 5, 1987.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 87-5731 Filed 3-16-87; 8:45 am]

BILLING CODE 4140-01-M

Clinical Cancer Program Project Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Clinical Cancer Program Project Review Committee, National Cancer Institute, National Institutes of Health, April 13, 1987, Holiday Inn-Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

This meeting will be open to the public on April 13 from 8:30 a.m. to 9 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on April 13 from 9 a.m. to adjournment for the review, discussion and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Robert D. Hammond, Executive Secretary, Clincial Cancer Program Project Review Committee, 5333 Westbard Avenue, Room 822, Bethesda, Maryland 20892 (301/496-7924) will furnish substantive program information.

Dated: March 5, 1987.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 87-5733 Filed 3-16-87; 8:45 am]

BILLING CODE 4140-01-M

Nursing Science Research Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Nursing Science Research Review Committee, National Center for Nursing Research, April 29 and 30, and May 1, 1987, Building 31C, Conference Room 7, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public on April 29, from 9 a.m. to 10 a.m. Agenda items to be discussed will include the mission and organization of the National Center for Nursing Research, the Director's Report, future meeting dates, workload for the September 1987 meeting, and orientation of members. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on April 29 from 10 a.m. to adjournment on May 1, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Adele H. Wood, Executive Secretary, Nursing Science Research Review Committee, National Center for Nursing Research, National Institutes of Health, Building 38A, Room B2E17, Bethesda, Maryland 20894, (301) 496-0526, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: March 5, 1987.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 87-5732 Filed 3-16-87; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the Board of Scientific Counselors

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), April 9, 10, and 11, 1987, National Institutes of Health, Building 2, Room 102, Bethesda, Maryland 20892. This meeting will be open to the public on April 9 from 8 p.m. to 10 p.m., April 10 from 9 a.m. to 12 noon and again from 2 p.m. to 4:30 p.m., and April 11 from 9 a.m. to 10:30 a.m. The open portion of the meeting will be devoted to scientific presentations by various laboratories of the NIDDK Intramural Research Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on April 9 from 7:30 to 8 p.m., April 10 from 12 noon to 2 p.m. and again from 4:30 p.m. to recess, and April 11 from 10:30 a.m. to adjournment for the review, discussion and evaluation of individual intramural programs and projects conducted by the NIDDK, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meeting and rosters of the members will be provided by the Committee Management Office, National Institute of Diabetes and Digestive and Kidney Diseases, Building 312, Room 9A19, Bethesda, Maryland 20892. Further information concerning the meeting may be obtained by contacting the office of Dr. Jesse Roth, Executive Secretary, Board of Scientific Counselors, National Institutes of Health, Building 10, Room 9N-222, Bethesda, Maryland 20892, (301) 496-4128.

Dated: March 10, 1987.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 87-5734 Filed 3-16-87; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

[NTP-86-086] [NTP-86-087]

National Toxicology Program; Availability of National Toxicology Program; Fiscal Year 1986 Annual Plan

The Director of the National Toxicology Program (NTP) announces the availability of the *NTP Annual Plan for Fiscal Year 1986*, solicits comments on it, and urges all interested persons to propose chemicals for study.

Background

The National Toxicology Program coordinates and strengthens Department of Health and Human Services' (DHHS) toxicology research, applied studies, and assay methods development and validation, and provides toxicological information used by health research and regulatory agencies and others to protect the public health. Specific goals are to:

- Broaden the spectrum of toxicologic information obtained on selected chemicals;
- Increase the numbers of chemicals studied within funding limits;
- Develop and validate a series of tests and protocols responsive to regulatory needs;
- Communicate Program plans and results to governmental agencies, the medical and scientific communities, and the public.

The NTP coordinates relevant toxicology activities of the National Institute of Environmental Health Sciences of the National Institutes of Health; the National Center for Toxicological Research of the Food and Drug Administration; and the National Institute for Occupational Safety and Health of the Centers for Disease Control.

The NTP Executive Committee links DHHS health research agencies with health regulatory agencies to ensure that NTP's toxicology research, testing and test development activities are responsive to regulatory and public health needs. Agencies sitting on the Executive Committee are:

- Consumer Product Safety Commission
- Environmental Protection Agency
- Food and Drug Administration
- National Cancer Institute
- National Institute for Occupational Safety and Health
- National Institute of Environmental Health Sciences
- National Institutes of Health
- Occupational Safety and Health Administration

The NTP Board of Scientific Counselors provides scientific oversight of the NTP. The NTP Board advises the NTP Director and the NTP Executive Committee on scientific content and policy and evaluates the scientific merit and overall quality of NTP science. The members (listed in the 1986 Annual Plan) are appointed by the DHHS Assistant Secretary for Health. For the purposes of the Program, the NTP Director, Dr. David P. Rall, who also serves as the Director of the National Institute of Environmental Health Sciences, reports to the Assistant Secretary for Health.

The program segments of the NTP are grouped into two categories—toxicological research and applied studies, and coordinative management activities.

Individual NTP scientists are identified as leaders of the major program segments and subprogram activities and serve as the focus or contact persons for their particular activities. Program and project leaders are identified in the 1986 Annual Plan.

The development and approval by the Secretary, DHHS, of the NTP Annual Plan is central to the effective planning, coordination, and operation of the National Toxicology Program. The National Toxicology Program's eighth Annual Plan consists of two parts. First, the *NTP Annual Plan for Fiscal Year 1986* [NTP-86-086] describes current year NTP research, applied studies, methods development and validation efforts, resources and past year program accomplishments. (Table of Contents follows this announcement.) Second, the *Review of Current DHHS, DOE and EPA Research Related to Toxicology* [NTP-86-087] lists chemicals being studied by the various DHHS agencies, the Department of Energy, and the Environmental Protection Agency, and describes toxicology research and toxicology methods currently being developed by these agencies.

The NTP welcomes nominations of chemicals for study from all parts of Government and the private sector. At a minimum, the nominator should give the name of the chemical or substance, the rationale for the nomination, and recommend the type study(s) to be considered. In addition, it would be desirable, but is not essential, to supplement each nomination with the following information, if known.

I. Chemical and physical properties.

II. Production, use, occurrence, and analysis.

III. Toxicology.

IV. Disposition and structure-activity-relations.

V. Ongoing toxicological and environmental studies in Government, industry, and academia.

The Program wishes to emphasize that nominations are welcome even if this information is not available.

To receive the *NTP Annual Plan for Fiscal Year 1986*, or the *FY 1986 Review of Current DHHS, DOE, and EPA Research Related to Toxicology*, please write or call the NTP Public Information Office, P.O. Box 12233, Research

Triangle Park, NC 27708, (telephone: (919) 541-3991 or FTS 629-3991).

Written or verbal comments on the FY 1986 Annual Plan are requested and welcome. These should be addressed to Dr. Larry Hart, Assistant to the Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, NC 27709 (telephone: (919) 541-3971 or FTS 629-3971).

Dated: March 10, 1987.

David P. Rall, M.D., Ph.D.,

Director, National Toxicology Program.

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[FR Doc. 87-5666 Filed 3-16-87; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Colville Indian Reservation, Washington; Acceptance of Retrocession of Jurisdiction

March 9, 1987.

Pursuant to the authority vested in the Secretary of the Interior by Executive Order No. 11435 of November 21, 1968 (33 FR 17339) and redelegated to the Assistant Secretary—Indian Affairs by 209 DM 8, I hereby accept at 12:01 a.m. PST, the day following publication of this notice in the **Federal Register**, retrocession to the United States of all criminal jurisdiction exercised by the State of Washington over the Colville Reservation, which was acquired by the State of Washington pursuant to Pub. L. 83-280, 67 Stat. 588, 18 U.S.C. 1162, 28 U.S.C. 1360, except as provided in Revised Code of Washington 37.12.010 and Chapter 267, Washington Laws of 1986.

The retrocession herein accepted was offered by the State of Washington on July 1, 1986, by Washington Proclamation No. 86-94 of the Governor of Washington pursuant to Chapter 267, Washington Laws of 1986, passed by the Legislature of Washington in the Forty-ninth Legislature, Regular Session, on March 11, 1986. Washington Proclamation No. 86-04 was transmitted by the Governor of Washington to the Secretary of the Interior on July 1, 1986.

By Tribal Resolution No. 1986-245 dated May 19, 1986, the Colville Business Council of the Confederated Tribes of the Colville Reservation requested that the Secretary of the Interior accept the retrocession offer of the State of Washington.

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

[FR Doc. 87-5661 Filed 3-16-87; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[WY-920-07-4111-15-7001; W-98842]

Proposed Reinstatement of Terminated Oil and Gas Lease

March 4, 1987.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-98842 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔percent, respectively.

The lessee has paid the required $500 administrative fee and $106.25 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-98842 effective April 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87-5674 Filed 3-16-87; 8:45 am]

BILLING CODE 4310-22-M

[OR-943-07-4520-12: GP7-124]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands have been officially filed in the Oregon State Office, Portland, Oregon on the date hereinafter stated:

Willamette Meridian, Oregon

T. 28 S., R. 9 W., Accepted December 12, 1986
T. 31 S., R. 14 W., Accepted December 12, 1986

The above-listed plats were officially filed December 19, 1986.

T. 39 S., R. 7 W., Accepted December 30, 1986
T. 15 S., R. 46 E., Accepted December 23, 1986

The above-listed plats were officially filed January 5, 1987.

T. 17 S., R. 11 W., Accepted January 23, 1987
T 10 S., R. 9. W., Accepted January 16, 1987
T. 20 S., R. 7 W., Accepted January 23, 1987
T. 36 S., R. 2 E., Accepted January 23, 1987

The above-listed plats were officially filed January 23, 1987.

T. 11 S., R. 2 E.
T. 26 S., R. 12 W.

The above-listed plats were accepted and officially filed January 30, 1987.

T. 40 S., R. 7 W., Accepted February 6, 1987, officially filed February 9, 1987

Washington

T. 22 N., R. 11 W., Accepted November 21, 1986 and officially filed December 19, 1986.
T. 21 N., R. 12 W., Accepted February 6, 1987 and officially filed February 9, 1987

The above-listed plats represent dependent resurveys and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 N.E. Multnomah Street, P.O. Box 2965, Portland, OR 97208.

Dated: February 27, 1987.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-5671 Filed 3-16-87; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Corpus Christi Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 8405, Block 304, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on February 27, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 4, 1987.

Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-5669 Filed 3-16-87; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 7, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the siginificance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park

Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by April 1, 1987.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

Humboldt County

Fernbridge, *Fernbridge*, CA 211

Los Angeles County

Los Angeles, *Al Malaikah Temple*, 655 W. Jefferson Blvd.
Los Angeles, *Second Church of Christ, Scientist*, 946 W. Adams Blvd.
West Hollywood, *Wright, Lloyd, Home and Studio*, 858 N. Doheny Dr.

Santa Cruz County

Capitola, *Venetian Court Apartments*, 1500 Wharf Rd.

Sonoma County

Healdsburg, *Madrona Knoll Rancho District*, 1001 Westside Rd.

FLORIDA

Orange County

Ocoee, *Withers—Maguire House*, 16 E. Oakland Ave.

KENTUCKY

Fayette County

Lexington, *Hartland*, 2230 Armstrong Mill Rd.

Henry County

Eminence vicinity, *Thompson House*, KY 22 and Old Giltner Rd.

MAINE

York County

Wells, *Laudholm Farm*, Laudholm Farm Rd.

MARYLAND

Baltimore (Independent City)

Pratt Street Power Plant, 601 E. Pratt St.

MISSISSIPPI

Adams County

Natchez vicinity, *Smithland*, 1 mi. S of Kingston-Hutchins Landing Rd.

MISSOURI

St. Charles County

St. Charles, *St. Charles Odd Fellows Hall*, 117 S. Main.

PENNSYLVANIA

Lancaster County

Columbia, *Manor Street Elementary School*, Tenth and Manor Sts.

TENNESSEE

Grundy County

Altamont, *Woodlee, L.V., House (Grundy County MRA)*, Cumberland St.
Gruetli, *Stagecoach Inn (Grundy County MRA)*, Colony Rd.
Gruetli, *Stoker-Stampfli Farm (Grundy County MRA)*, Colony Cemetery Rd.

TEXAS

Travis County

Austin, *Newton House (East Austin MRA)*, 1013 E. Ninth St.

Williamson County

Kenney's Fort (41W M465).

VIRGINIA

Powhatan County

Michaux vicinity, *Beaumont*, VA 313

Prince William County

Nokesville, *Park Gate*, 11508 Park Gate Dr.

Pulaski County

Snowville, *Cypress Grove Christian Church*, VA 693.

[FR Doc. 87-5709 Filed 3-16-87; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275-6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance: Extension.
Bureau/Office: Office of Compliance and Consumer Assistance.
Title of Form: Annual Performance Report Form.
OMB Form No.: 3120-0006.
Agency Form No.: OCP-101.
Frequency: Annually.
Respondents: Prospective Individual Shippers.
No. of Respondents: 125.
Total Burden Hrs.: 3,125.
Brief Description of the need and proposed use: Collect, analyze and provide information concerning a carrier's performance which will assist consumers in making a choice of carriers based on their past service record.

Noreta R. McGee,

Secretary.

[FR Doc. 87-5675 Filed 3-16-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-288X)]

Burlington Northern Railroad Company; Exemption; Abandonment in Washington County, MN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts Burlington Northern Railroad Company from the requirements of 49 U.S.C. 10903, *et seq.*, to abandon a 7.4-mile line of railroad in Washington County, MN, subject to standard employee protective conditions.

DATES: This exemption will be effective on April 16, 1987. Petitions to stay must be filed by April 1, 1987, and petitions for reconsideration must be filed by April 13, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB-6 (Sub-No. 288X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Peter M. Lee, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area), or toll free (800) 424-5403.

Decided: February 26, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87-5676 Filed 3-16-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-156 (Sub-No. 18X)]

Delaware and Hudson Railway Company; Exemption; Abandonment in Schenectady County, NY

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by the

Delaware and Hudson Railway Company of approximately 0.93 miles of track in Schenectady County, NY, subject to standard labor protective conditions.

DATES: This exemption will be effective on April 16, 1987. Petitions to stay must be filed by March 27, 1987. Petitions for reconsideration must be filed by April 6, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB-156 (Sub-No. 18X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioners' representative: George H. Kleinberger, Fifth Street, Watervliet, NY 12189.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to: T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: March 10, 1987

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-5677 Filed 3-16-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Notifications; National Center for Manufacturing Sciences

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98-462 ("the Act"), the National Center for Manufacturing Sciences ("NCMS") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identity of NCMS and (2) the nature and objectives of NCMS. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identity of NCMS, and its general areas of planned activity, are given below.

NCMS is a nonprofit public benefit corporation organized under the laws of the State of California. Its principal place of business is P.O. Box 7682, McLean, Virginia 22106. It is a membership corporation, with membership open to United States manufacturers of discrete durable goods, machine tools or manufacturing systems. NCMS is currently at the organizational stage and has no members at this time.

The objectives of NCMS and the area of planned activity are to conduct, sponsor, fund, direct and otherwise promote scientific research, development and demonstration of technologies and scientific methods that will improve manufacturing processes and materials in the United States; to assist in the implementation of such technologies and methods; to provide a forum for the examination of technical and scientific issues having a significant impact on manufacturing; to enhance the image of manufacturing and related technologies and sciences in order to attract high-quality faculty and students to teach, study and work in the field; to serve as a national clearinghouse, library and data source for manufacturing research information; and to publish or sponsor articles, newsletters and other publications related to manufacturing sciences. NCMS will continue in existence for an indefinite period of time.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87-5740 Filed 3-16-87; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Howard J. Reuben, M.D.; Revocation of Registration

On May 20, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) directed an Order to Show Cause to Howard J. Reuben, M.D. of 3201 West Peoria Avenue, A-100, Phoenix, Arizona 85029. The Order to Show Cause sought to revoke his DEA Certificate of Registration AR5967647 and to deny any pending applications for renewal of such registration. The proposed action was predicated on Dr. Reuben's lack of authorization to handle controlled substances in the State of Arizona. 21 U.S.C. 824(a)(3).

The Order to Show Cause was sent to Dr. Reuben by registered mail and was returned to DEA unclaimed. DEA Diversion Investigators made several attempts to contact Dr. Reuben. The investigators determined that Dr. Reuben's whereabouts are unknown. It is quite evident that Dr. Reuben is no longer practicing medicine at the address listed on his DEA Certificate of Registration. The Administrator concludes that considerable effort has been made to personally serve Dr. Reuben with the Order to Show Cause without success. Consequently, the Administrator now enters his final order in this matter based on the investigative file.

The Administrator finds that by Order dated January 28, 1986, the Arizona State Board of Medical Examiners summarily suspended Dr. Reuben's license to practice medicine in the State of Arizona, thereby terminating his authority to prescribe, dispense, administer or otherwise handle controlled substances in the State of Arizona. The Administrator further finds that following a hearing, the Arizona State Board of Medical Examiners revoked Dr. Reuben's license to practice medicine on May 8, 1986.

The Administrator concludes that DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. See, 21 U.S.C. 823(f). The Administrator and his predecessors have consistently so held. See, *Ramon Pla, M.D.*, Docket No. 86-54, 51 FR 41168 (1986); *George S. Heath, M.D.*, Docket No. 86-24, 51 FR 26610 (1986); *Dale D. Shahan, D.D.S.*, Docket No. 85-57, 51 FR 23481 (1986); *Agostino Carlucci, M.D.*, Docket No. 82-20, 51 FR 33184 (1984).

Having considered the facts and circumstances in this matter, the Administrator concludes that Dr. Reuben's DEA Certificate of Registration should be revoked due to his lack of authorization to handle controlled substances in the State of Arizona. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 21 CFR 0.100(b), orders that DEA Certificate of Registration AR5967647, previously issued to Howard J. Reuben, M.D., be, and it hereby is revoked and any pending applications for renewal of such registration are hereby denied. This order is effective March 17, 1987.

Dated: March 10, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-5660 Filed 3-16-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Steering Subcommittee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: April 14, 1987, 9:30 a.m., Rm. S4215 A&B Frances Perkins, Department of Labor Building, 200 Constitution Avenue, N.W., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523–6565.

Signed at Washington, DC this 10th day of March 1987

Robert W. Searby,

Deputy Under Secretary International Affairs.

[FR Doc. 87–5720 Filed 3–16–87; 8:45 am]

BILLING CODE 4510–28–M

Pension and Welfare Benefits Administration

[Application No. D–6650 et al.]

Proposed Exemptions; Gainesville Medical Group et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Gainesville Medical Group—Andrews & Associates, P.A., Profit Sharing Plan (the Plan) Located in Gainesville, Florida

[Application No. D–6650]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the lease of real property by the Plan to GMG Enterprises (GMG), a partnership whose partners are composed of the Plan's trustees, provided that the terms and conditions of the transaction are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 47 participants and net assets of approximately $4,524,487 as of December 31, 1985. The Plan's trustees are Drs. John W. Andrews, Robert H. McCollough, Melvin C. Dace and Richard W. Cunningham (the Trustees).

2. The applicant represents that in October 1972, the Plan purchased for investment 6 lots located in the North Florida Doctors Office Park in Gainesville, Florida for $81,500. The Plan then leased 5 of the 6 lots (The Property) to GMG for a period of 40 years beginning October 1, 1972 (Original lease).[1] GMG then constructed a medical office and laboratory building on the Property.

The Original lease was a 40 year ground lease providing for an initial monthly rental of $1,000 per month and subsequent rental adjustments every 24 months equal to one-twelfth of ten percent of the fair market value of the Property. The current monthly rental based on this formula is $4,166 per month. The applicant represents that the Original lease was covered by the transitional rules provided under section 414 of the Act.[2]

3. The applicant recognizes that the continuation of the Original lease beginning July 1, 1984 was prohibited transaction under the Act and, therefore, has agreed to pay any applicable excise taxes which are found to be due by the Internal Revenue Service with respect to this transaction. The applicant now requests an exemption for a new lease between the parties (the New lease). The New lease would be for a period of 26 years with monthly payments of $5,000 and provision for adjustment of the rental payments every 24 months based on an independent appraisal from

[1] The Plan subsequently sold one of the six lots to an unrelated party.

[2] In this proposed exemption, the Department expresses no opinion as to the applicability of section 414 to the Original lease.

a qualified real estate appraiser, but in no case less then $5,000 per month. The New lease would be a triple net lease in favor of the Plan.

4. The Property was appraised on July 7, 1986, by Mr. Don Emerson, Jr., an MAI appraiser with the firm of Don Emerson Appraisal Company of Gainesville, Florida, as having a fair market value of $483,000. Further, Mr. Emerson indicated in his appraisal that the rental on the Property should approximate $3,600 per month.

5. The Plan has appointed Mr. Robert R. Rowe (Mr. Rowe) to serve as independent fiduciary with respect to the New lease. Mr. Rowe represents that he has been involved in the real estate business for 20 years and has directly supervised over $800 million in real estate brokerage. Mr. Rowe is a "Certified Residential Broker" and a graduate of the Realtor Institute as well as being a specialist in real estate securities. Mr. Rowe represents that he has no relationships with respect to any parties to the transaction. Mr. Rowe states that he has consulted with legal counsel and is aware of his duties, liabilities and responsibilities as an independent fiduciary under the Act.

In formulating his opinion as to the merits of the leasing transaction, Mr. Rowe examined the following items:

(a) The New lease between the Plan and the Partnership.

(b) The appraisal report on the fair rental value of the Property prepared by Don Emerson Appraisal Company, Inc., dated July 7, 1986.

(c) The prohibited transaction exemption application dated March 20, 1986, and all supplements thereto.

(d) The improvements; the Property and the surrounding area were inspected for quality of maintenance, development in the area and general trends of growth.

(e) The Plan's investment portfolio. Based on the above examination, Mr. Rowe concludes that:

(a) The New lease will be an excellent investment for the Plan and will be in the best interests of and protective of, the Plan and its participants and beneficiaries;

(b) The rent is above the current fair market rental value for land in that area of Gainesville, Florida.

(c) The Property represents a relatively low percentage (less than 12%) of the Plan's total assets.

As independent fiduciary, Mr. Rowe will monitor the fair rental value of the Property and will obtain updated appraisals every 24 months to insure that the lease payments are arm's-length or better. Mr. Rowe will also ensure that the New lease is not allowed to go into default and will take any steps necessary to enforce the rights of the Plan with respect to the New lease.

6. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act because:

(a) The terms and conditions of the New lease have been approved and will be monitored and enforced by Mr. Rowe; and

(b) Mr. Rowe represents that the New lease is in the best interests of the Plan and its participants and beneficiaries.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Stolar Partnership Profit Sharing Plan (the Plan) Located in St. Louis, Missouri

[Application No. D-6851]

Proposed Exemption.

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code shall not apply to a proposed loan by the Plan to the Stolar Partnership (the Employer), the sponsor of the Plan; provided that such loan is on terms at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 47 participants and assets of $2,185,418.85 as of March 31, 1986. The Employer is a law firm which is a Missouri general partnership. The Trustee of the Plan is the Centerre Trust Company (the Trustee) of St. Louis, Missouri.

2. Due to growth of the Employer's operation, principals of the Employer recently determined that the Employer required new and larger office space. The Employer has entered into a long-term lease for the required new space and has commenced the relocation. In relocating to the new facility, the Employer has incurred and continues to incur substantial expenses related to moving and to adapting the new facility to the Employer's use. These expenditures are estimated by the Employer to total $1,150,000. The Employer intends to finance the relocation and expansion in part by short-term bank loans (the Debts) which the Employer will increase as additional expenses become due and payable. The Employer proposes to partially retire the Debts with a loan from the Plan (the Loan) and is requesting an exemption to permit the Loan.

3. All terms and conditions of the Loan, described herein, will be embodied in a written agreement (the Agreement) between the Plan and the Employer, which will expressly require the granting of the exemption now requested as a condition precedent to the consummation of the Loan. The Employer represents that the Debts to be retired with the Loan proceeds do not and will not include any loans from the Trustee. The Loan will be in the amount of the lesser of $600,000 or twenty-five percent of the Plan's assets at the time of the Loan. The Loan will be repayable in thirty-two consecutive quarterly payments of principal and interest, with principal amortized over eight years and interest, adjusted quarterly, of one-half of one percent above the prime rate announced by Centerre Bank of St. Louis, an affiliate of the Trustee. The Loan will be secured by an irrevocable and unconditional letter of credit issued by Mark Twain National Bank of St. Louis (MT Bank) with a face amount equal to the Loan principal plus five months interest at the interest rate applicable upon initiation of the Loan. The Employer represents that the irrevocable letter of credit will constitute an agreement between MT Bank and the Trustee on behalf of the Plan which will permit the Trustee to quickly and immediately draw drafts on MT Bank which MT Bank will unconditionally agree to pay. The Employer represents that it is independent of MT Bank and that the Employer's total deposits with MT Bank constitute less than one percent of MT Bank's total assets. The Agreement requires the Employer to pay all reasonable expenses, including legal expenses, incurred on behalf of the Plan in connection with the Loan. The Loan will be evidenced by a promissory note (the Note) which provides that the Employer will pay all costs of collection, including reasonable attorney's fees, in the event any such costs are incurred by the Plan.

4. The interests of the Plan for all purposes under the proposed Loan will be represented by the Trustee. The Trustee represents that it is independent of the Employer, that there is no outstanding extension of credit between the Trustee and the Employer and that the Employer's total deposits with the

Trustee and its affiliate banks constitute less than one percent of the total deposits of the Trustee. After an evaluation of all terms and conditions of the proposed Loan, the Trustee represents that it will be in the best interests of the Plan. The Trustee has determined that the Loan will leave the Plan appropriately liquid and diversified and that the proposed interest rate of the Loan is appropriate and commensurate with the prevailing market interest rate for this type of loan. The Trustee represents that, after an independent investigation, it has determined that the Employer's credit standing is satisfactory. The Trustee confirms that it will monitor and require the Employer's compliance with all provisions of the Agreement and the Note for the duration of the Loan.

5. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The interests of the Plan for all purposes under the proposed Loan are represented by an independent fiduciary, the Trustee, which will monitor the Employer's compliance with the Loan provisions for its duration; (2) The Trustee has determined that the Loan is in the best interests of the Plan, that the proposed interest rate is appropriate and that the Loan will leave the Plan appropriately liquid and diversified; and (3) The Loan will be evidenced by a promissory note and secured by an irrevocable and unconditional letter of credit in a total amount equal to the Loan principal plus five months interest at the interest rate applicable upon the initiation of the Loan.

For Further Information Contact: Ronald Willett of the Department (202) 523-8881. (This is not a toll-free number).

Minnesota Mutual Fire & Casualty Co. Performance Share Program (the Plan) Located in Minnetonka, Minnesota

[Application No. D-7040].

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale of an annuity contract to the Plan by Minnesota Mutual Life Insurance Company (MML), provided the following conditions are met: (a) MML—

(1) Is a party in interest with respect to the Plan by reason of its ownership of guaranty fund certificates of Minnesota Mutual Fire and Casualty Company (MMF&C),

(2) Is licensed to sell insurance in at least one State as defined in section 3(10) of the Act,

(3) Has obtained a Certificate of Compliance from the Insurance Commissioner of its domiciliary state, Minnesota, within the 18 months prior to the date when the transaction is entered into, or when such certificates were last made available by the domiciliary state, if earlier, and

(4)(A) Has undergone a financial examination (within the meaning of the law of its domiciliary state, Minnesota) by the Insurance Commissioner of Minnesota within 5 years prior to the end of the year preceding the year in which the subject transaction occurs; or

(B) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the subject transaction.

(b) The Plan pays no more than adequate consideration for the annuity contract;

(c) No commissions are paid with respect to the sale of the contract; and

(d) For each taxable year of MML, the gross premiums and annuity considerations received in that taxable year by MML for life and health insurance or annuity contracts for the Plan MMF&C, and all employee benefit plans (and their employers) with respect to which MML is a party in interest by reason of a relationship to such employer described in section 3(14)(E) or (G) of the Act, or by reason of its ownership of guaranty fund certicates, does not exceed 50 percent of the gross premiums and annuity considerations received for all lines of insurance in that taxable year by MML. For purposes of this condition (d):

(1) The term "gross premiums and annuity considerations received" means that total of premiums and annuity considerations received, reduced (in both the numerator and denominator of the fraction) by experience refunds paid or credited in that taxable year by MML.

(2) All premiums and annuity considerations written by MML for plans which it alone maintains are to be excluded from both the numerator and the denominator of the fraction.

Preamble

On August 7, 1979, the Department published a class exemption [Prohibited Transaction Exemption 79-41 (PTE 79-41), 44 FR 46365] which permits insurance companies that have substantial stock or partnership affiliations with employers establishing or maintaining employee benefit plans to make direct sales of life insurance, health insurance or annuity contracts which fund such plans, if certain conditions are satisfied.

One of the conditions of PTE 79-41 is that the insurance company making the sale is a party in interest or disqualified person with respect to the plan by reason of a stock or partnership (including a joint venture) affiliation with the employer establishing or maintaining the plan that is described in section 3(14) (E) or (G) of the Act and section 4975(e) (E) or (G) of the Code (the Affiliation Condition). The applicants represent that MML is unable to meet this condition because MML owns 100% of the guaranty fund certificates of MMF&C, but is not a shareholder or partner of MMF&C (see rep. 1, below). However, the Department did state in PTE 79-41 that, where warranted by the circumstances and merits of a particular case, the Department would consider individual cases for possible additional exemptive relief.

Summary of Facts and representations

1. MMF&C, which is the Plan sponsor, is a Minnesota mutual insurance company. MMF&C is controlled by MML, a Minnesota insurance corporation. MML holds all of the outstanding certificates of the guaranty fund of MMF&C. Under Minnesota law, a mutual fire insurance company may establish a guaranty fund which is divided into certificates. Each certificate holder of record is in essence a member of the mutual fire insurance company and is entitled to one vote in any meeting of the members of the company for each $10 investment in guaranty fund certificates. Certificate holders are also entitled to elect at least one-half of the total number of directors of the mutual fire insurance company. In this case, MML is entitled to elect all of the directors of MMF&C.

2. MMF&C amended its Employee Thrift Savings Plan to become the Plan, effective as of January 1, 1987. The Plan is a defined contribution plan, with approximately 56 participants, which is similar to the MML Performance Share Program. It is expected that there will be movement of personnel between the two employers, and the two employers desire to have comparability of benefits. Further, as part of that comparability,

the two employers desire to have the same type of plan investments.

3. The MML plan is currently funded by an annuity contract issued by MML. MMF&C desires to have the trustees of the trust established to fund the Plan buy a similar contract from MML. Because MML controls MMF&C through its position as a certificate holder, the applicants represent that MML is a party in interest, disqualified person and a fiduciary with respect to the Plan. The acquisition of the annuity contract is therefore a prohibited transaction, and the applicants represent that PTE 79–41 is not applicable because MML cannot satisfy the Affiliation Condition. However, as previously noted, MML controls MMF&C.

4. The applicants represent, however, that the transaction would satisfy all conditions of PTE 79–41 other than the Affiliation Condition:

(a) MML owns all of the outstanding certificates of the guaranty fund of MMF&C and thus controls MMF&C, the Plan sponsor;

(b) MML is licensed to sell insurance in Minnesota as well as several other states;

(c) MML has obtained all appropriate certifications from the Insurance Commissioner of Minnesota, its domiciliary state;

(d) MML has undergone appropriate financial examinations, including one for the year ending December 31, 1985, performed by the independent certified public accounting firm of Peat, Marwick, Mitchell & Co. (PMM). MML is currently undergoing an examination by PMM for the taxable year ending December 31, 1986.

(e) No more than adequate consideration will be paid for the annuity contract to be purchased from MML. The pricing method will be the same as that used for the similar contract which funds the MML Plan;

(f) No commissions will be paid with respect to the annuity contract to be purchased from MML; and

(g) The premiums on the annuity contract will not exceed 50% of the gross premiums and annuity considerations received for all lines of insurance of MML for any applicable taxable years. MML is a sizeable life insurance company with assets in excess of $3 billion as of December 31, 1985.

5. In summary, the applicants represent that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (a) all of the protections provided by PTE 79–41 are provided to the Plan, except that the Affiliation Condition cannot be satisfied, although MML controls MMF&C; (b) MML is a sound, viable life insurance company which does a substantial amount of business with unrelated parties; and (c) the Plan's trustees have determined that the proposed transaction is appropriate for the Plan and in the best interests of its participants and beneficiaries.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

The Albion National Bank Profit Sharing Plan (the Plan) Located in Albion, NE

[Application No. D–7056]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) through (E) of the Code shall not apply, effective August 17, 1984, to the past cash sale on August 17, 1984, by the Plan of 3000 shares of the stock (the Stock) of Packers Service Group, Inc. and Packers Management Company (Packers), to Elaine S. Wolf for $126,000 provided that the sales price was no less than the fair market value of the Stock on the date of sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with approximately 20 participants. As of December 31, 1984 the Plan had assets of $1,363,420.55. The trustees of the Plan (the Trustees) were all directors and shareholders of Albion National Bank (the Employer), the Plan sponsor.

2. Elaine S. Wolf is the wife of James M. Wolf, who owns directly or indirectly 75% of the common stock of Albion National Management Co., the holding company of the Employer, is chairman of the board of directors of the Employer, and is a trustee of the Plan.

3. The applicant represents that in 1984, the Trustees decided to divest the Plan of the Stock, due to the fact that they believed that Packers, a bank holding company in Lincoln, Nebraska, was no longer a favorable investment. This belief was based on the generally weak condition of banks in the Midwest. Packers is the sole market maker for its own stock.

4. On or shortly before August 17, 1984, Thomas F. Ehlers, the Cashier and a director of the Employer and the Plan administrator, contacted Jay L. Dunlap, President of Packers, to inquire as to the current price of Packers stock. Mr. Dunlap informed Mr. Ehlers that the current price that Packers would pay for such stock was $42 per share.

5. On August 17, 1984, Mrs. Wolf purchased the Stock from the Plan at $42 per share, for a total price of $126,000, in cash.

6. In summary, the applicant represents that the transaction satisfied the criteria of section 408(a) of the Act because: (a) The Plan received the market value of the Stock, as established by Mr. Dunlap; (b) the transaction was for cash; and (c) the Plan was able to dispose of an asset which the Trustees determined was not a favorably investment.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of

whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are ture and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 12th day of March, 1987.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87-5745 Filed 3-16-87; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 87-28; Exemption Application No. D-6867 et al.]

Grant of Individual Exemptions; Unifi, Inc. Profit Sharing Plan and Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Unifi, Inc. Profit Sharing Plan and Trust (the Plan) Located in Greensboro, North Carolina

[Prohibited Transaction Exemption 87-28; Exemption Application No. D-6867]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to both (1) the contribution of certain real property (the Property) to the Plan by Unifi, Inc. (the Employer), a party in interest with respect to the Plan, and (2) the leaseback of the Property by the Plan to the Employer, provided that the terms and conditions of the transactions are at least as favorable to the Plan as those obtainable from an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 3, 1987, at 52 FR 3365.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Consolidated Steel and Supply Company Employees' Retirement Income, Savings and Stock Investment Plan (the Plan) Located in Elk Grove Village, IL

[Prohibited Transaction Exemption 87-29; Exemption Application No. D-6877]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of a parcel of unimproved real property, for the total cash consideration of $280,000, to J and J Investment Company, a party in interest with respect to the Plan, provided this amount is not less than fair market value at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 23, 1986 at 51 FR 45965.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8196. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 12th day of March, 1987.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87-5744 Filed 3-16-87; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Retiree Health of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:00 a.m., Thursday, April 2, 1987, at the American Association of Retired Persons, 1909 K Street NW., Room 802, Washington, DC 20049.

This eight-member work group was formed by the Advisory Council to study issues relating to retiree health benefit programs for employee welfare plans covered by ERISA.

The purpose of the April 2 meeting is to develop an agenda.

Signed at Washington, DC, this 12th day of March, 1987.

Dennis M. Kass,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 87-5670 Filed 3-16-87; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Availability of Agency Records Schedules

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before May 1, 1987. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending Approval

1. United States Coast Guard, Management Analysis Division, Paperwork Management Branch (N1-26-87-1). Records relating to radiographs.

2. Department of Commerce, Bureau of International Programs (N1-151-87-5). Agenda and minutes of meetings of the Publications Clearance Committee and the Clearance Committee for Internal Operating Procedures, 1952-59.

3. General Services Administration, Office of Administrative Services, Records and Forms Management branch (N1-269-86-2). Revision to records disposition schedule relating to information management records.

4. Department of Labor, Office of the Secretary, Office of Administrative Law Judges (NC1-174-81-3). Hearing case files.

5. Department of Labor, Office of the Undersecretary, Benefits Review Board (N1-174-83-2). Comprehensive schedule covering all records of the board.

6. National Archives and Records Administration, Office of Records Administration (N1-GRS-87-7). Additions to General Records Schedule 14 relating to the mandatory review for declassification provisions of Executive Order 12356.

Dated: March 10, 1987.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 87-5649 Filed 3-16-87; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL SCIENCE FOUNDATION

Solicitation for Private Sector Partnerships To Improve K-12 Science and Mathematics Education

This document is one of a series of targeted proposal solicitations that the National Science Foundation's (NSF's) Directorate for Science and Engineering Education will issue to invite proposals directed toward high priority problems and opportunities facing mathematics, science, and technology education in the Nation's schools.

These solicitations are intended to supplement current guidelines and announcements that describe the broad range of interests of the Directorate and its Divisions of Materials Development, Research and Informal Science Education (see NSF Publication 87-12), and of Teacher Preparation and Enhancement (NSF 87-10).

This particular solicitation is intended to encourage activities by partnerships between business/industry, school systems, and other educational institutions as appropriate—so as to demonstrate ways in which community concerns can be translated into positive action to improve the quality of science, mathematics, and technology education in American elementary and secondary schools. Proposals are invited in any of the following areas of programming supported by the Directorate for Science

and Engineering Education: Teacher Enhancement, Teacher Preparation, Science and Mathematics Education Networks, Research in Teaching and Learning, Instructional Materials Development, Informal Science Education, and Applications of Advanced Technologies.

Introduction

The future of the Nation, in an increasingly technological and competitive world marketplace, is directly tied to the education of its population in science and mathematics. The discoveries, inventions, and technical applications that can keep the U.S. economy and defense strong and secure require both well-trained scientists and engineers and a general population that understands the methods, capabilities, and limitations of science. From that general population come not only technicians and other users of the developments of science but legislators, journalists, and others whose technical knowledge can contribute to our future in obvious ways.

The National Science Foundation has an important education mission which can help bridge the gap between practicing scientists and educators to ensure the best possible science and mathematics education for our citizens. The National Science Foundation Act of 1950 (as amended) authorizes and directs the Foundation to ". . . initiate and support basic scientific research and programs to strengthen scientific research potential and science . . . and engineering education programs at all levels. . . ."

Within NSF, the Directorate for Science and Engineering Education is responsible for defining and funding programs and projects that support this educational mission. The Directorate has adopted as its first long-range goal:

"To help ensure that high-quality primary and secondary education in science and mathematics is available to every child in the United States.

"This background should provide a base for understanding by all citizens and be sufficient to enable those with the interest and talent to pursue technical careers, especially in science and engineering."

The Directorate is also committed to the fullest possible participation of women, minorities, and the physically disabled in science and mathematics education and careers and in the projects it supports.

Solicitation

The purpose of this solicitation is to generate novel approaches and models for improvement of K–12 science and mathematics education by including the intellectual and financial resources of the private sector in partnership with local school systems, colleges, and universities. Together, the partners will analyze needs, develop strategies, and undertake specific activities to improve science and mathematics education in the schools.

There is an ongoing concern in the private sector about the quality of the elementary and secondary education in science and mathematics available to our children. This concern is reflected in the popularity of partnership activities ranging from adopt-a-school at the local level to State, regional, and National coalitions for educational improvement. This solicitation is intended to encourage action-oriented partnerships to develop activities on a local or regional level which could be adopted in other areas of the Nation.

The Directorate anticipates funding five to twelve projects for a three to four year demonstration period, with a total NSF investment of 2–4 million dollars.

There are many examples of business-academic cooperation to improve mathematics and science education in elementary and secondary schools. The involvement of practicing scientists and engineers in these activities is usually critical to their success and should be encouraged. Professional societies often provide a focus for participation by their members in educational projects. A few illustrations follow:

- At the elementary school level, cooperative activities have included award programs for master teachers; plant and laboratory guided teacher tours; establishment of special funds to purchase unusual teaching equipment or supplies; and grants or scholarships for teachers involved in updating or other educational activities.

Companies have provided scientific and engineering personnel for special meetings, lecturers, workshops, demonstrations, inservice courses, and other activities aimed at strengthening science education.

Partnerships have formed to acquaint the public with the roles of science and technology in contemporary society, and to focus on efforts to increase local support for local schools through better awareness of the problems of the schools and of the importance of improved science and mathematics education.

- At the secondary school level, additional activities have included improvement of technical library materials; sponsorship of student fairs and projects and related awards for academic achievement; student and teacher tours of plants and laboratories to inform and assist guidance counseling in the schools; and support for career days and other activities to tell students about science and engineering careers.

Some companies have provided summer appointments for qualified science teachers in technical areas and pre-college internships for students interested in science and engineering careers.

The Foundation encourages the partnership to examine the needs of the local community and to specify for support those activities it deems most appropriate, and without undue concern for the likelihood of funding. Submission of those ideas to NSF in a *preliminary proposal* (see below) will initiate discussion with its staff.

The Foundation does not attempt to deal with purely local problems nor to address unique local needs; NSF funds must be employed catalytically, leading to increased levels of sustained activity as a result of the grant and providing models or novel approaches which can be used by other communities with similar concerns and needs.

Partnerships are invited to propose project activities that fall within the scope of any of the following current programs of the Directorate for Science and Engineering Education: Teacher Enhancement, Teacher Preparation, Science and Mathematics Education Networks, Research in Teaching and Learning, Instructional Materials Development, Informal Science Education, and Applications of Advanced Technologies. Details of these programs and information on the kinds of activities that can be supported will be found in the Program Announcements of the Division of Materials Development, Research and Informal Science Education (see NSF Publication 87–12), Office of Studies and Program Assessment (NSF 87–15), and of the Division of Teacher Preparation and Enhancement (NSF 87–10).

Specific activities that may be supported by NSF funds include but are not limited to: teacher enhancement (e.g., supplementary training or industrial experience relevant to classroom teaching); teacher assistance (e.g., delivery of additional classroom demonstrations, special presentations, or role model activities); preparation and delivery of materials for teachers to use in the classroom; and other activities that result in improved classroom educational experiences for teachers and students.

Activities that are less likely to be funded include direct student activities, such as tutoring or summer science or

mathematics camp tuition. capital investment for facilities, etc.

Developing a Proposal

Who May Submit

Partnerships eligible to submit proposals under this solicitation will consist, at a minimum, of a business (or group of businesses) and one or more school districts which have agreed on a set of needs for educational improvement in K–12 science and mathematics, and which are willing to devote their respective areas of expertise and relevant resources to meeting those needs.

The Foundation welcomes proposals from all qualified scientists and science educators, and strongly encourages women and minorities to participate fully in the competition described in this document. In accordance with Federal statutes and regulations and NSF policies, no person shall be excluded on grounds of race, color, age, gender, national origin, or physical disability from participation under any program or activities receiving financial assistance from the National Science Foundation.

Planning a Proposal

As their first step, we encourage interested parties to make a commitment with others in the community to evaluate the needs of science and mathematics education in local schools. Typical partnerships might include, but are not limited to, local businesses or industrial firms and the local school district or group of districts, as well as colleges or universities with needed technical and educational expertise. Chambers of Commerce and other civic or business groups might also be appropriate members of a partnership.

The term "local" as used here refers to breadth of activity as well as geographic extent. In most cases, it will be more effective to start with a limited scope and a well-conceived plan for expansion, than to attempt to initiate substantial changes over a large area. This, of course, will be strongly affected by circumstances and we encourage the discussion of this question as part of a preliminary proposal.

The analysis of problems or needs to be addressed and the planning of activities to meet those needs should include practicing teachers as well as science supervisors or other administrative personnel of the school districts involved. The Foundation strongly encourages the intellectual collaboration of practicing scientists and engineers (in industry or in education) with local school districts and teachers in efforts to identify novel approaches to improved science and mathematics education.

Generally, activities planned should not supplant the classroom teacher as the main source of information about science and mathematics. Particularly at the elementary school level, it is important that science instruction be not just "available", but be designed to allow active participation by the child; this may require special assistance for teachers or special programs to involve parents in the motivation and encouragement of their children.

Although the Foundation has identified grades K–12 as the primary focus for attention, local conditions may argue for extension of activities into the undergraduate years, for example by involving college students as role models or advisers for younger students, or by continuing the provision of particular educational opportunities to local students as they make the transition to undergraduate studies. It is not NSF's intent to exclude such activities from consideration by the partnership.

For further discussion of the philosophies and goals of the Directorate, proposers may wish to consult the publication *Directory of Awards, Directorate for Science and Engineering Education* (NSF 86–27).

Preliminary Proposals

Proposers are strongly urged to submit a preliminary proposal for comment and discussion prior to preparing a formal proposal in response to this solicitation.

The preliminary proposal may be in the form of a comparatively brief and informal letter-of-inquiry, outlining the concept and general structure of the contemplated project, specifying the activities to be supported, describing the organizations constituting the partnership and their commitments to it, indicating the principal personnel to be involved (with mention of their backgrounds), and estimating the order of magnitude of support to be requested from the Foundation.

The preliminary proposal should not exceed six pages in length. The NSF staff will respond with comments on the concept and an opinion of the general competitive strength of such a project. No information concerning a preliminary proposal is made available to peer reviewers, hence submission of one will not in any way affect the review of a related formal proposal put forward at a later date. A preliminary proposal can be of great help to proposers in deciding whether to undertake the cost and effort of a formal submission.

Content of Formal Proposals

The sections of the formal proposal that constitute the description of the project should address three major areas: the activities to be undertaken; the partnership; and evaluation and dissemination plans.

The activities to be undertaken should lie within program areas currently supported by the Foundation (see SOLICITATION, above) and result in improved delivery of science and mathematics education in the classroom. Here, the term *education* includes information about careers and the use of role models to encourage participation by women, minorities, and the physically disabled.

As indicated above, activities typically should be designed to have broad impact on the student population. The experience of the Foundation is that projects most often meet this goal by working with teachers who can then impact other teachers as well as their own students. There may, however, be compelling reasons for working with school administrators or career counselors to increase the impact of partnership activities.

Partnerships should, at a minimum, consist of a business (or group of businesses) and one or more school districts which have agreed on a set of needs for educational improvement in K–12 science and mathematics, and which are willing to devote their respective areas of expertise and relevant resources to meeting those needs. A real financial commitment by the partners will result in a stronger proposal with increased prospects for funding. Additional educational institutions (two- or four-year colleges or universities) may be quite appropriate as members of the partnership, especially when teacher enhancement activities are targeted.

Describe the administrative mechanisms that will be used to organize and manage the project. Any partnership, consultant, or subcontract arrangements should be described and the rights and responsibilities of each party set forth clearly. Cost-sharing, cooperative funding, and other financial arrangements should be described. Potential income producing aspects of the project should be indicated.

The financial aspects of cost-sharing and joint or cooperative funding by the proposing institution and others with whom it has formed a partnership for the purposes of the proposal should be shown in a detailed budget for each party. These budgets should reflect the arrangements and agreements among

the parties, and should show exactly what cost-sharing is proposed for each budget item.

Any fee proposed to be paid to a collaborating or "partner" for-profit entity should be indicated. (Fees will be negotiated by the Division of Grants and Contracts in consultation with the Program.) Any copyright, patent and royalty agreements (proposed or in effect) must be described in detail, so that the rights and responsibilities of each party are made clear. If any part of the project is to be subcontracted, a budget and work plan prepared and duly signed by the subcontractor must be submitted as part of the overall proposal and addressed in its narrative.

Evaluation and dissemination should be considered at the earliest stages of proposal development. How will the partners recognize success or failure? What checkpoints can be built in to allow an unsuccessful activity to be redirected rather than terminated? Assuming success, what active steps will the partners take to inform other communities of their successful approach and to encourage those communities to adopt similar projects appropriate to their own situations?

At a minimum, the formal proposal should include:

- A clear description of activities to be undertaken and how those activities were selected—proposals should reflect agreement on the problems or needs to be addressed as well as on the resources required to carry out recommended activities;
- A discussion of the potential for larger-scale impact of the project's activities after a demonstration period;
- A clear description of the formation and history of the partnership and its method of operation—proposals will be weighed significantly on the level of cooperation among the partners;
- A description of the expertise and material resources available from each partner and formally committed by each partner;
- An approach to evaluation that will allow the partners to demonstrate successful accomplishment of the goals of the project;
- A strategy for dissemination and replication of successful projects.

Major factors in the review of proposals for determination of awards will be the credibility of the project activities as ways to bring about meaningful improvements in K–12 science and mathematics education locally, and the potential for their adoption and utilization elsewhere.

Projects should include a combination of professionals with a suitably broad range of knowledge and experience. The proposal should document the background and qualifications of project staff in such areas as science, science education, school policies and procedures, and classroom teaching at the relevant levels.

The proposal narrative should reflect, as appropriate, existing classroom programs of high quality [1], the results of research on the effectiveness of previously developed material [2], and the recommendations of professional societies and commissions [3].

Activities should be designed, to the extent possible, to be appropriate for all students, including females, minorities, students with physical or sensory disabilities, and the gifted and talented.

Contributions to the project from the partners may be in the form of in-kind services, facilities, direct contributions, release time for participating teachers, etc. Questions concerning commitments, activities, or partnership development may be directed to the program staff at any time.

Preparation and Submission of Proposals

For guidance on the specifics of preparation of formal proposals, proposers should consult either of two brochures: *Program Announcement, Division of Materials Development, Research and Informal Science Education* (NSF 87–12); or *Program Announcement and Guide, Division of Teacher Preparation and Enhancement* (NSF 87–10); as well as *Grants for Research and Education in Science and Engineering* [GRESE] (NSF 83–57, revised 1/87).

The two program announcements (NSF 87–10 and NSF 87–12) contain required forms that should accompany each proposal and discussions of the criteria that are used in evaluating proposals. One of these required forms is a Cover Page. In the upper left hand block of this Cover Page, labeled "For Consideration by NSF Organizational Unit," it is important to identify the Directorate and the solicitation to which you are responding, i.e., *"Directorate for Science and Engineering Education, Private Sector Partnerships."*

The third publication (NSF 83–57, revised 1/87) provides detailed information on proposal preparation and processing and on grant administration. Except as modified by the guidelines set forth herein and in NSF 87–10 or NSF 87–12, standard Foundation guidelines on proposal preparation (content, format, budget, other sources of support; etc.), proposal submission, evaluation, awards (general information and highlights), declinations, and withdrawals contained in NSF 83–57 are applicable.

These publications may be obtained from the Forms and Publications Unit, National Science Foundation, Washington, DC 20550.

Appropriate administrative officials of the applicant's institution must be familiar with the policies and procedures contained in the *NSF Grant Policy Manual, Revised, NSF 77–47.* If the submitting organization has never been a recipient of an NSF award, the cognizant program officer will request that one free copy of the Manual be sent to the institution. [Additional copies of the Manual may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.] If a proposal is recommended for an award, the NSF Division of Grants and Contracts will request certain organizational, management, and financial information. These requirements are contained in Chapter III of the Manual.

When To Submit

Preliminary proposals related to this solicitation may be submitted at any time up to August 31, 1987. Proposers should expect that two to three weeks will be required before staff comment is returned.

Formal proposals submitted in response to this solicitation will be accepted for review if they are postmarked on or at any time before September 30, 1987. Processing of proposals in hand will be started on April 1, 1987; July 1, 1987; and October 6, 1987. Proposers should be aware that four to six months after each of these target dates may be necessary for review and final action on proposals in hand at those times.

Where to Submit

Preliminary proposals should be sent to: Private Sector Partnerships, Room 414, Directorate for Science and Engineering Education, National Science Foundation, Washington, DC 20550.

Formal proposals, when submitted, should be addressed to: Data Support Services Section, Room 223, National Science Foundation, Washington, DC 20550.

For Additional Information

Questions about this solicitation that are not addressed in this publication may be directed to the NSF staff by writing to the private Sector Partnerships address above or by calling (202) 357–9466. Such direct contact to discuss potential projects is welcomed.

Inquiries concerning other programs of the Directorate of Science and Engineering Education should be sent to the same address, but Room 516. The general telephone number for such inquiries is (202) 357–7557.

Peter E. Yankwich,

Senior Executive Officer, Directorate for Science and Engineering Education.

March 11, 1987.

Endnotes

1.A. *New Directions in Elementary Science Teaching*, P. DeHart Hurd and J.J. Gallagher, Wadsworth Publishing Co. Inc., 1969.

B. *Elementary Science*, J. Penick, ed. Focus on Excellence Series, National Science Teachers Association, 1982.

2.A. Effects of Activity-based Elementary Science on Student Outcomes: A Quantitative Synthesis. T. Bredderman. Review of Educational Research 53 (1983) 499–518.

B. *How Effective Were the Hands-on Programs of Yesterday?*, J. Shymansky, W. Kyle, Jr., and J. Alport, Science and Children 1982.

C. *The Effects of New Science Curricula on Student Performance*, J. Shymansky, W. Kyle, Jr., and J. Alport, Journal of Research in Science Teaching 20 (1983) 387–404.

3.A. *A Nation Prepared: Teachers for the 21st Century*, Carnegie Forum on Education and the Economy, Task Force on Teaching as a Profession, Washington, DC, May 1986.

B. *A Revised and Intensified Science and Technology Curriculum, Grades K–12 Urgently Needed for Our Future*, Report by the NSB Commission on Precollege Education in Mathematics, Science and Technology, 1983.

C. *An Agenda for Action: Recommendations for School Mathematics of the 1980's*, National Council of Teachers of Mathematics, 1980.

D. *Characteristics of a Good Elementary Science Program*. K. Mechling and D. Oliver, National Science Teachers Association, 1982.

E. *Chemistry in the Kindergarten-through-Ninth Grade Curricula: Report with Recommendations*, American Chemical Society, 1983.

F. *Educating Americans for the 21st Century*, NSB Commission on Precollege Education in Mathematics, Science and Technology, 1983.

G. *The Mathematical Sciences Curriculum K–12: What is Still Fundamental and What is Not*, Report from the Conference Board of the Mathematical Sciences to the National Science Board Commission on Precollege Education in Mathematics, Science and Technology, 1982.

H. *Research Within Reach: Elementary School Mathematics*, Mark Driscoll, National Council of Teachers of Mathematics, 1981.

I. *Research Within Reach: Science Education*, National Science Teachers Association, 1985.

J. *Research Within Reach: Secondary School Mathematics*, Mark Driscoll, National Council of Teachers of Mathematics, 1983.

K. *School Mathematics: Options for the 1990's*, (Chairman's Report and Proceedings of the Conference). U.S. Department of Education, 1984.

L. *Science and Mathematics in the Schools: Report of a Convocation*. National Academy of Sciences, 1982.

M. *Science-Technology-Society: Science Education for the 1980's. Position Statement*, National Science Teachers Association, 1982.

N. *Tomorrow: Report of the Task Force Study of Chemistry Education in the United States*, American Chemical Society Washington, DC, October 1984.

O. *What Research Says to the Science Teacher*, Volume 4, National Science Teachers Association, 1982.

The National Science Foundation provides awards for education and research in the sciences, mathematics, and engineering. The Foundation welcomes proposals from all qualified educators, scientists, mathematicians, and engineers, and strongly encourages women, minorities, and the physically disabled to compete fully in the Programs described in this document.

In accordance with Federal statutes and regulations and NSF policies, no person on grounds of race, color, age, sex, national origin or physical disability shall be excluded from participation in, denied benefits of, or be subject to discrimination under any program or activity receiving financial assistance from the National Science Foundation.

The grantee is wholly responsible for the conduct of supported research and education activities, and preparation of the results for publication. The Foundation, therefore, does not assume responsibility for such findings or their interpretation.

NSF has TDD [Telephonic Device for the Deaf] capability which enables individuals with hearing impairments to communicate with the Division of Personnel Management for information relating to NSF programs, employment, or general information. This telephone number is (202) 357–7492.

Catalog of Federal Domestic Assistance Number 47.063 (Precollege Science and Mathematics Education)

Other Publications of Interest

Program Announcements and Guidelines

Division of Teacher Preparation and Enhancement (NSF 87–10); detailed information on: Teacher Preparation; Teacher Enhancement; Science and Mathematics Education Networks; and Presidential Awards for Excellence in Science and Mathematics Teaching.

Division of Materials Development, Research and Informal Science Education (NSF 87–12); detailed information on: Instructional Materials Development; Research in Teaching and Learning; Applications for Advanced Technologies; and Informal Science Education Program.

Office of Studies and Program Assessment (NSF 87–15); information on: Studies and Analyses; and Assessment Activities.

Division of Research Career Development; detailed information on: Advanced Institute Travel Awards (telephone 202/357–7536); Graduate Fellowships (NSF 86–46); Minority Graduate Fellowships (NSF 86–47); NATO Postdoctoral Fellowships in Science (NSF 86–42); and Presidential Young Investigator Awards (NSF 86–22). (These four documents are revised annually.)

Office of College Science Instrumentation; information on the College Science Instrumentation Program (NSF 86–23).

Project/Award Directories

The Directorate publishes a variety of annual and occasional directories of awards made under the programs administered by it. Examples are:

Directory of Awards: October 1, 1983—September 30, 1985; Directorate for Science and Engineering Education (NSF 86–27); and

Presidential Young Investigators 1986 Awards (NSF 86–37; updated annually by the Division of Research Career Development).

These publications should be requested from the appropriate administrative unit within the Directorate.

General Information

Grants for Research and Education in Science and Engineering [GRESE]. (NSF 83–57, revised 1/87).

Single copies of any of these publications may be ordered from: Forms and Publications Unit, Room 232, National Science Foundation, Washington, DC 20550.

[FR Doc. 87–5657 Filed 3–16–87; 8:45 am]
BILLING CODE 7555–01–M

Program Solicitation Programs for Elementary School Science Instruction II

This document is one of a series of targeted program solicitations designed to elicit proposals directed toward high priority problems and opportunities facing mathematics, science and technology education in the Nation's schools. It is the second of two that are intended to encourage partnerships among publishers, school systems and scientists/science educators for the purpose of providing a number of competitive, high quality, alternative

science programs for use in typical American elementary schools.

These solicitations are intended to supplement, not to supplant, the current guidelines and announcements that describe the broad range of interests of NSF's Divisions of Materials Development, Research and Informal Science Education (see NSF Publication 87-12) and of Teacher Preparation and Enhancement (NSF 87-10).

National Science Foundation; Directorate for Science and Engineering Education; Division of Materials Development, Research and Information Science Education; Instructional Materials Development Program

Submission Deadlines: June 1, 1987 (for preliminary proposals); August 3, 1987 (for formal proposals)

Introduction

The Division of Materials Development, Research and Informal Science Education supports a wide range of projects designed to generate new knowledge and provide new and improved models and materials that can help to increase the quality of, and continuously renew, the Nation's educational systems in mathematics, science and technology. This broad goal translates into four objectives that frame the Division's programs:

- Expand our understanding of the factors that promote effective teaching and learning of mathematics, science and technology;
- Stimulate the development of exemplary educational models and materials—incorporating the most recent advances in subject matter, research in teaching and learning, and instructional technology—and facilitate their use in the schools;
- Encourage informal learning through mass media programs that can reach large portions of the population efficiently and effectively, science museum exhibits and activities that provide direct hands-on experiences, and science related programs of recreational organizations; and
- Analyze the potential for, and explore the use of, advanced technologies in education.

The Division employs two approaches in eliciting and selecting projects for support:

- First, the Division accepts "unsolicited" proposal submitted in response to program announcements describing its general purview and interests (e.g., NSF 87-12).
- Second, the Division issues periodic program solicitations that supplement these guidelines and focus resources on specific high priority problems and opportunities. Generally, these solicitations will be designed to leverage or energize activity that will be self-perpetuating or have other lasting impact, and will be for one-time NSF support.

This is one such solicitation. It is the second solicitation to focus on the creation of improved programs and materials for science instruction in elementary schools.

Solicitation

Research has demonstrated the clear and lasting impact of early learning—not only as a base for further education, but also for establishing patterns of study, reasoning, and curiosity, and for fostering talent. This is particularly true in the sciences, where stimulation of intellectual curiosity and an early introduction to important principles and concepts are critical to later success. Without a challenging and involving introduction, talent is less likely to appear or flourish.

Research has also shown a great deal about how science should ideally be taught. We know that early education in the sciences should establish a background of broad principles and concepts that can be developed and extended over the course of years. And we know that children should learn the fundamentals of inquiry and discovery, making their own observations and interpretations so as to develop patterns of critical thinking that can serve them throughout their lives. The habits of disciplined inquiry and analysis are the essential characteristics of scientific discovery.

Yet, very little time is devoted to science instruction in most elementary schools, and learning that involves active initiative and participation by the child, other than as a reader, is rare indeed. In many elementary school classrooms, science is not taught at all.

This is not for a lack of materials or demonstrations. There exist many instructional materials of high quality for teaching science to elementary school children, and these materials are being used or adapted very successfully in a small number of schools and systems. But their attractive potential seems difficult to realize in the vast majority of the Nation's schools.

Some of the obstacles and impediments to the implementation of model progams are clear. For the child to be an active participant in learning science requires facilities, materials, maintenance, and support staff that usually are not available in a typical elementary school. All these require money. Equally important, they require a change in approach by teachers and school administrators.

The classical methods of teaching—"teach-to-the-text" and "read-and-recite"—are deeply embedded in our schools. And elementary schools are already burdened with major obligations: What should be displaced to make way for added hours of science? What strategies for educational change are most effective for modifying well established practices?

The purpose of this solicitation, and of the one that preceded it (NSF Publication 86-4), is to encourage efforts to develop materials and programs that address these complex problems in today's schools and classrooms.

Perhaps there is a need to modify currently available materials, or to adapt them in ways that encourage their use. Perhaps there is a need for new materials that are better adapted to the realities and styles of more typical schools and teachers. Perhaps there is a need for special materials that help schools and teachers to utilize available instructional materials.

Perhaps there is a need for special work with teachers or special programs to inform parents. Perhaps it is possible to combine science with other activities, such as reading and mathematics.

Perhaps all of the above.

Early in FY 1986, the Directorate for Science and Engineering Education issued a program solicitation, *Programs for Elementary School Science Instruction* (NSF 86-4), which called for proposals addressing these issues. That solicitation, as does the curent one, sought the formation of partnerships among publishers, school systems, and scientists/science educators for the purpose of providing several competitive, high quality alternative science programs for use in typical American elementary schools. After an intense competition, in which more than one hundred preliminary proposals and more than thirty formal proposals were received and evaluated, the Foundation made three major grants:[1] [2] [3] Each of these projects combines the efforts of:

[1] National Geographic Kids Network Project. Technical Education Research Center, Inc., 8 Eliot Street, Cambridge, MA 02138. Project Director: Robert F. Tinker. Publisher: National Geographic Society. School systems: Lexington, MA and District of Columbia.

[2] Elementary School Science and Health Materials, Biological Science Curriculum Study, The Colorado College, Colordo Springs, CO 80903. Project Director: Rodger W Bybee. Publisher: Kendall/Hunt Publishing Company. School system: Colorado Springs School District.

[3] Improving Urban Elementary Science: A Collaborative Approach, Education Development

Continued

• Outstanding scientists and science educators, who will be responsible for assuring the quality of content and pedagogy;

• A publishing organization, which will contribute a major portion of the investment capital, provide an editorial/marketing perspective throughout the development process, and disseminate the resulting materials; and

• A school system or systems, which will work with the developers to test the materials and to assure that they are useful and successful in a representative school environment.

In each case, the publisher will make a large capital investment and will set aside a substantial portion of the project income for teacher support to encourage widespread and effective use of the materials.

The Foundation is pleased with the response that the previous solicitation elicited from the publishing community. The three awards exemplify a significant new pattern of government and private sector cooperation in addressing the needs of precollege education. Together, the projects will provide realistic and attractive new options for science instruction in typical elementary schools.

At the same time, the Foundation recognizes an important need for additional alternatives. The previous solicitation, with its emphasis on partnerships, represented a significant departure from NSF's prior approach to materials development. The timeline for creating these partnerships was admittedly short. Some of the proposals submitted in response to the previous solicitation would have been highly rated had they included a solid partnership arrangement. Other prospective proposers, who were encouraged in the preliminary proposal process, did not submit formal proposals because they were unable to finalize the partnership arrangements in time.

Now that the partnership concept in materials development is better understood in the community, and now that there are three models of such partnerships in place to serve as examples, the process of partnership formation should proceed more easily. Therefore, the Foundation now seeks additional proposals that will combine the talent and resources of publishers, scientists/science educators, and school systems for the purpose of increasing both the quality and the quantity of science instruction in America's elementary schools.

Proposals are sought for projects that will improve the content, increase the role of the child as an active agent in the learning process, and lead to an increase in the time allotted to science instruction in elementary schools. We seek to foster a number of exemplary programs that can serve as alternative real-world models for schools and systems that are eager to change.

An ideal proposal should build on the strengths of existing instructional materials—modifying, adapting, selecting or otherwise exploiting them as part of a cohesive science program for elementary school use, i.e., for grades K–6 or for a subset of these grade levels.

Among possible activities that could be included is the establishment and testing of model elementary school science programs. Projects that integrate science with other subjects or areas of instruction will also be eligible for consideration. Projects that focus on limited areas of elementary school science will be eligible for consideration, but they should include plans for coordinating any newly developed materials with existing activities and materials to form a coherent program.

It is expected that projects will devote special attention to frequent hands-on experiences, and will establish a coherent pattern of science topics appropriate for elementary school instruction. To the extent possible, projects, should capitalize upon the experience and interest of children.

Proposals should reflect relevant research in teaching, learning and the use of technology. They should also discuss the standards of student achievement that will be sought and describe how the success of the project will be measured. This discussion should include criteria to be used in the evaluation of adoption and change in the school environment.

The Division of Materials Development, Research and Informal Science Education expects to make three or four awards in this area, with a duration of 3–4 years each. The total funding for these projects will approximate

Important Considerations

The purpose of this solicitation is to provide alternative models for improvement in elementary school science instruction. Proposals will be weighed significantly on the basis of coherence of philosophy and credibility of the plan to bring about meaningful change.

At a minimum, every proposal should include:

• A clear and consistent view of the goals of early science education, and a discussion of how these goals can be accommodated with the competing demands and constraints fo typical schools and systems;

• A preliminary discussion of exisitng elementary school science materials—including identification of gaps, problems or obsolescence;

• Discussion of a plan to develop, select, revise or supplement materials, so as to serve the needs of typical teachers and students;

• Discussion of implementation issues and impediments to adoption—and how these will be addressed by the project;

• Discussion of any plans to develop supplementary programs or materials for use by teachers, school administrators and parents;

• Discussion of plans for assuring the accuracy of the science and for incorporating the most recent findings of research in teaching and learning, including appropriate content advice from scientists, teachers and educators;

• Description of the relationship of the proposed program to state and locally mandated elementary science programs;

• A strategy for promoting widespread awareness and adoption or replication of successful projects.

Projects should be staffed by a combination of professionals with the appropriate broad range of knowledge and experience. Each proposal should document the education and experience of project staff in such area as: science, science education, school policies and procedures, and classroom teaching at the relevant levels.

Individuals with strong subject matter skills are expected to play a key role. Project personnel—either individually or jointly—are expected to provide robust expertise in the scientific disciplines, an extensive knowledge of the needs of teachers and students, and familiarity with the problems of educational change at the elementary school level.

Participation in the planning, development, and testing phases of the project by publishers or other dissemination agents is required. To qualify as a "publisher or other dissemination agent", an organization must have the capacity to create school programs, produce them in appropriate form (e.g., print, video, software), and attend to all the needs of warehousing, marketing, distribution, preservice and inservice.

Center, 55 Chapel Street, Newton, MA 02160. Project Director: Karen Worth. Publisher: Delta Education, Inc. School systems: Selected schools in Cleveland and San Francisco will collaborate fully in the development effort: selected schools in Los Angeles, Pittsburgh, Philadelphia, and Boston will also be involved in the field testing of the materials.

Similarly, participation throughout the planning, development, and testing process by one or more representative school systems is required. Proposals should provide evidence of cooperation and commitment of the school systems.

Each proposal should take into account existing programs of high quality,[4,5] the results of research on the effectiveness of previously developed materials,[6,7,8] and the recommendations of professional societies and commissions.[9,10,11,12,13,14,15,16]

Programs should be designed, to the extent possible, to be appropriate for all students, including females, minorities, students with physical or sensory disabilities, and the gifted and talented.

Proposals should include plans for field testing and appropriate revision of the developed materials. Funds may be requested to support workshops for teachers, administrators and parents, as part of the initial implementation and testing of the materials.

Proposals should particularly address questions of how a successful program might spread to other locations. Plans for dissemination—for making information about the materials available to State and local school agencies and for making the materials available to schools that wish to use them—should be described in detail. Each project should develop plans for teacher support—for ensuring that teachers are adequately prepared to use the materials effectively and for ensuring that any necessary maintenance requirements are within the capacity of the schools to provide. Projects should plan to document carefully the strategies for change and the experiences in implementing the materials in field-test schools.

The formal proposal should contain a formal agreement of collaboration between the proposer and the "partners". This agreement should spell our all conditions that the proposer and the partners have agreed upon, including the plan for copyright ownership and what each expects as a result of the project. Detailed budgets and explanations for any subcontracts that will be in effect should be included in the proposal. Agreements with publishers for their financial participation should incorporate subsequent publication and distribution rights.

The NSF policy on copyright ownership states that the grantee may own or permit others to own copyright. The grantee agrees that the Federal Government will have a nonexclusive, non-transferable, irrevocable, royalty-free license to exercise or have exercised for or on behalf of the United States throughout the world all the exclusive rights provided by copyright. Such license, however, will not include the right to sell copies to the public.

Phased contributions by the Government and the private sector may be requested. Proposers are strongly encouraged to discuss this possibility with the program staff.

Publishers will be expected to dedicate a share of their profit that is proportionate to the NSF investment to enhancing the goals of this solicitation. This enhancement should be beyond what the publisher normally would provide. Preservice or inservice teacher support activities are an example of an appropriate type of activity. The proposal should detail the publisher's plan for meeting this requirement.

Contributions from participants, beneficiaries or other sources are strongly encouraged. These might be in the form of in-kind services, facilities, direct contributions, release time for participating teachers, etc. Such participation provides a particularly eloquent assurance of the importance assigned to the project.

Preparation and Submission of Proposals

For guidance on the specifics of proposal preparation, proposers should consult the two publications, *Program Announcement, Division of Materials Development, Research and Informal Science Education* (NSF 87-12) and *Grants for Research and Education in Science and Engineering* (NSF 83-57: revised 1/87).

The first of these publications (NSF 87-12) includes required forms that should accompany each proposal and a discussion of the criteria that are used in evaluating proposals. One of these required forms is a Cover Page. In the upper left hand block of this Cover Page, labeled "For Consideration by NSF Organizational Unit," it is important to identify the Division and the solicitation target to which you are responding, i.e., "Division of Materials Development, Research and Informal Science Education; Programs for Elementary School Science Instruction." Another required form is NSF Form 1225 (Information about Principal Investigators/Project Directors); be sure to submit one copy of this form when you submit your proposal (proposals cannot be processed without this from).

The second publication (NSF 83-57) provides detailed information on proposal preparation and processing and on grant administration. Except as modified by the guidelines set forth herein and in NSF 87-12, standard NSF guidelines on proposal preparation (content, format, budget, other sources of support, etc.), proposal submission, evaluation, NSF awards (general information and highlights), declinations, and withdrawals contained in NSF 83-57 are applicable.

These publications may be obtained from the Forms and Publications Unit, National Science Foundation, 1800 G. Street, NW., Washington, DC 20550.

Who May Submit

Organizations with a scientific or educational mission are eligible to submit proposals. Among these are: colleges and universities; state and local education agencies; professional societies; science museums and zoological parks; research laboratories; private foundations; publishers and private industries; and other public and private organizations, whether for profit or non-profit. Proposers are strongly encouraged to involve participation from more than one of these areas, as well as appropriate schools or systems.

The Foundation provides awards for research in the sciences and

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[4] *New Directions in Elementary Science Teaching*, P. DeHart Hurd and J. J. Gallagher, Wadsworth Publishing Co. Inc., 1969.

[5] *Elementary Science*, J. Penick, ed. Focus on Excellence Series, National Science Teachers Association, 1982.

[6] *Effects of Activity-based Elementary Science on Students Outcomes: A Quantiative Synthesis*, T. Bredderman. Review of Educational Research 53 (1983) 499-518.

[7] *How Effective Were the Hands-on Science Programs of Yesterday?*, J. Shymansky, W. Kyle, Jr., and J. Alport. Science and Children 1982.

[8] *The Effects of New Science Curricula on Student Performance*, J. Shymanksy W. Kyle Jr., and J. Alport. Journal of Research in Science Teaching 20 (1983) 387-404.

[9] *A Revised and Intensified Science and Technology Curriculum, Grades K-12 Urgently Needed for Our Future*. Report by the NSB Commission on Precollege Education in Mathematics, Science and Technology, 1983.

[10] *Characteristics of a Good Elementary Science Program*, K. Mechling and D. Oliver. National Science Teachers Association, 1982.

[11] *Chemistry in the Kindergarten-through-Ninth Grade Curricula: Report with Recommendations*, American Chemical Society, 1983.

[12] *Educating Americans for the 21st Century*, National Science Board Commission on Precollege Education in Mathematics, Science and Technology, 1983.

[13] *Research Within Reach: Science Education*, National Science Teachers Assocation, 1985.

[14] *Science and Mathematics in the Schools: Report of a Convocation*, National Academy of Sciences, 1982.

[15] *Science-Technology-Society: Science Education for the 1980s*, Position Statement. National Science Teachers Association, 1982.

[16] *What Research Says to the Science Teacher*, Volume 4. National Science Teachers Association, 1982.

engineering. The awardee is wholly responsible for the conduct of such research and preparation of the results for publication. The Foundation, therefore, does not assume responsibility for such findings or their interpretation.

The Foundation welcomes proposals from all qualified scientists and science educators, and strongly encourages women and minorities to compete fully in the development programs described in this document. In accordance with Federal statutes and regulations and NSF policies, no person shall be excluded on grounds of race, color, age, gender, national origin, or physical disability from participation under any program or activity receiving financial assistance from the National Science Foundation.

NSF has TDD (Telephonic Device for the Deaf) capability which enables individuals with hearing impairment to communicate with the Division of Personnel and Management for information relating to NSF programs, employment, or general information. This number is 202/357–7492.

How to Submit

Preliminary Proposals

By their nature, proposals appropriate to this solicitation are likely to be complex and require a laborious and costly effort. In addition, formal proposals will receive a particularly intensive and demanding review. For both of these reasons, *a preliminary proposal and a response from the Instructional Materials Development Program are required before a formal proposal will be accepted.*

This preliminary proposal may be in the form of a comparatively brief and informal letter-of-inquiry, outlining the concept and general structure of the contemplated project, as well as the organization(s) and personnel contemplated, and the order of magnitude of support required. This preliminary proposal should not exceed six pages in length. The Program will respond with comments on the concept and a staff opinion of the general competitive status of such a proposal. This opinion will have no formal role, nor will it in any way preclude or affect the review of a formal proposal, but it can be of great help to proposers in deciding whether to undertake the cost and effort of a formal submission.

Formal Proposals

Information on how to submit formal proposals, along with a checklist for proposal preparation, is included in the Program Announcement (NSF 87–12).

When to Submit

Early submission of the required preliminary proposal is encouraged, in order to allow adequate time after a response has been received for the preparation of a formal proposal. Ordinarily, two to four weeks are required for processing the preliminary proposal. Therefore, preliminary proposals should be submitted by June 1, 1987 at the latest.

Formal proposals responding to this program solicitation must be received no later than close of business on August 3, 1987.

Where to Submit

Preliminary proposals should be sent to: Instructional Materials Development Program, Room 420, National Science Foundation, Washington, DC 20550.

Formal proposals, when submitted, should be addressed to: Data Support Services Section, Room 220, National Science Foundation, Washington, DC 20550.

For Additional Information

Questions not addressed in this publication or in the publications NSF 87–12 and NSF 83–57 may be directed to the NSF staff by writing to the Instructional Materials Program at the address above, or by calling 202/357–7066. Such direct contact to discuss potential projects is welcomed.

(Catalog of Federal Domestic Assistance Number 47.067, Materials Development, Research and Informal Science Education).

George W. Tressel,

Director, Division of Materials Development, Research and Informal Science Education.

March 11, 1987.

[FR Doc. 87–5658 Filed 3–16–87; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection:

10 CFR Part 32–Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material.

3. The form number if applicable: Not applicable.

4. How often the collection is required: Reports are submitted as events occur. Applications for new licenses and amendments are submitted only once. Applications for renewal licenses are submitted every five years.

5. Who will be required or asked to report: Applicants for or holders of a license to manufacture or initially transfer certain items containing byproduct material.

6. An estimate of the number of responses: 11,725

7. An estimate of the total number of hours needed to complete the requirement or request: 9,280.

8. An indication of whether section 3504(h), Pub. L. 96–511 applies:

Not applicable.

9. *Abstract:* 10 CFR Part 32 prescribes requirements for the issuance of specific licenses to persons who manufacture or initially transfer items containing byproduct material for sale or distribution to exempt persons or general licensees, and requirements for licenses to introduce byproduct material into a product or material.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Richard D. Otis, Jr., (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 11th day of March 1987.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 87–5729 Filed 3–16–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–289]

GPU Nuclear Corp. et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of Appendix R to 10 CFR Part 50 to GPU Nuclear Corporation (the licensee), for Three Mile Island

Nuclear Station, Unit No. 1 (TMI-1) located in Dauphin County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action: The exemptions are related to Section III.G.2 of Appendix R to 10 CFR Part 50, "Fire Protection for Nuclear Power Facilities Operating Prior to January 1, 1979". Section III.G of Appendix R requires fire protection for equipment important to safe shutdown. Such fire protection is achieved by various combinations of fire barriers, fire suppression systems, fire detectors, and separation of safety trains (III.G.2) or alternate safe shutdown equipment free of the fire area (III.G.3). The objective of this protection is to assure that one train of equipment needed for hot shutdown would be undamaged by fire and that systems needed for cold shutdown could be repaired within 72 hours (III.G.1).

The Need for the Proposed Action: Because it it not possible to predict the specific conditions under which fire may occur and propagate, the design basis protective features are specified in the rule rather than the design basis fire. Plant specific features may require protection different from the measures specified in section III.G. In such cases, the licensee must demonstrate, by means of a detailed fire hazards analysis, that existing protection in conjunction with proposed modifications will provide a level of safety equivalent to the technical requirements of section III.G of Appendix R.

Environmental Impact of the Proposed Action: The proposed exemptions provide a level of safety equivalent to the technical requirements of section III.G of Appendix R. The exemptions will not change the types, or allow an increase in the amounts, of effluents that may be released offsite. The exemptions would not result in an increase in individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemptions.

With regard to potential nonradiological impacts, the proposed exemptions involve features located entirely within the restricted areas as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemptions.

Alternative Use of Resources: This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for Three Mile Island Nuclear Station, Unit 1.

Agencies and Persons Consulted: The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to the proposed action, see the letters requesting exemptions dated February 2, 1987, February 11, 1987, February 28, 1987, and March 10, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Dated at Bethesda, Maryland, this 11th day of March, 1987.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, PWR Project Directorate #6, Division of PWR Licensing-B.

[FR Doc. 87-5726 Filed 3-16-87; 8:45 am]

BILLING CODE 7590-01-M

Seminar on Methodology Used in NUREG-1150, "Reactor Risk Reference Document"

The Nuclear Regulatory Commission will hold a seminar on the methodology used to compute the risk estimates that appear in NUREG-1150, "Reactor Risk Reference Document." The purpose of this meeting is to present an overview of the risk analysis methodology.

The seminar will be held on April 21-22, 1987, at the Holiday Inn Crown Plaza hotel in Rockville, Maryland.

To register by mail, write to U.S. Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, MS NL 005, Washington, DC, 20555, Attn: Wanda Haag. Please include your address and phone number. To register by telephone, call (301) 443-7936. You will *not* receive confirmation. Attendees must make their own hotel reservations.

Registration should be received no later than Friday, April 10, 1987.

(5 U.S.C. 552(a))

Dated at Bethesda, Maryland this 11th day of March, 1987.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Acting Director, Division of Reactor System Safety Office of Nuclear Regulatory Research.

[FR Doc. 87-5730 Filed 3-16-87; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published February 18, 1987 (52 FR 4980). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the Federal Register approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 A.M. and Subcommittee meetings usually begin at 8:30 A.M. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the April 1987 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 202/634-3265, ATTN: Barbara Jo White) between 8:15 A.M. and 5:00 P.M., Eastern Time.

ACRS Subcommittee Meetings

Metal Components, March 26, 1987, Washington, DC. The Subcommittee will review: (1) Beaver Valley, Unit 2 Whipjet Program, first application of GDC 4 broad scope rules, (2) NUREG-0313, Revision 2 with public comments, and (3) other related matters, e.g., status report of hydrogen water chemistry on materials behavior.

Reliability Assurance, April 8, 1987, Washington, DC. The Subcomittee will

review current industry and staff efforts relating to valve reliability.

Advanced Reactor Designs, April 16, 1987, Washington, DC. The Subcommittee will review NUREG–1226, "Development and Utilization of the NRC Policy Statement on the Regulation of Advanced Nuclear Power Plants".

Severe Accidents, April 22, 1987, Washington, DC. The Subcommittee will discuss the research plan intended to resolve the source term uncertainty areas and review the Expert Panels assessment of these programs.

Severe Accidents, April 23, 1987, Washington, DC. The Subcommittee will continue the review of the proposed generic letter for Individual Plant Examinations (IPEs) as part of the NRR Implementation Plan for the Severe Accident Policy Statement.

Thermal Hydraulic Phenomena, April 28 and 29, 1987, INEL, Idaho Falls, ID. The Subcommitte will review: (1) TIC activities at INEL, (2) Research Compendium supporting revision of the ECCS Rule, and (3) the results of the OECD LOFT program.

Babcock & Wilcox Reactor Plants, April 30, 1987, Washington, DC. The Subcommittee will continue its review of the long-term safety review of B&W reactors. This effort was begun during the summer of 1986; initial Committee comments offered on July 16, 1986 in a letter to V. Stello, EDO.

AC/DC Power Systems Reliability, May 1, 1987, Washington, DC. The Subcommittee will review the proposed Station Blackout rule (SECY–85–163).

Joint Standardization of Nuclear Facilities/GE Reactors, May 5 and 6, 1987 (tentative), Washington, DC. The Subcommittee will review the Staff SER and Chapter I of the EPRI Requirements Document, and the GE Licensing Basis Agreement.

Safety Research Program, May 6, 1987 (tentative), Washington, DC. The Subcommittee will discuss the proposed NRC Safety Research Progam and Budget for FY 1989 and gather information for use by the ACRS in the preparation of its annual report to the Commission on the related matter.

Regulatory Policies and Practices, May 26, 1987, Washington, DC. The Subcommittee will continue its current review of the nuclear regulatory process, and will review the NRR policy for nuclear plant license renewal.

Decay Heat Removal Systems, May 27, 1987, Washington, DC. The Subcommittee will continue its review of the NRR Resolution Position for USI A–45.

Regional and I&E Programs, May 29, 1987, Region IV, Arlington, TX The Subcommittee will review the activities under the control of the Region IV Office.

Joint Severe Accidents/Probabilistic Risk Assessment, June 3, 1987, Washington, DC. The Subcommittee will review the Research report NUREG–1150, "Reactor Risk Reference Document", which was issued in March 1987 for public comments.

Auxiliary Systems, Date to be determined (May/June), Washington, DC. The Subcommittee will discuss the heating, ventilation, and air conditioning (HVAC) system malfunctions and their impact on safety systems. Also, it will discuss the recent experience associated with inadvertent actuation of fire protection systems and its interaction on safety systems. In addition, it will discuss recent events associated with instrument air system malfunction, AEOD findings concerning the instrument air systems malfunctions and its recommendations to alleviate this problem.

Generic Items, Data to be determined (May/June), Washington, DC. The Subcommittee will discuss the process involved in prioritizing, resolving and implementing generic issues, and unresolved safety issues (USIs) so as to determine the effectiveness of this process.

Waste Management, Date to be determined (May/June), Washington, DC. The Subcommittee will review selected pertinent nuclear waste management topics to be indentified during an agenda planning session with NMSS and RES personnel on April 23, 1987.

Auxiliary Systems, Date to be determined (June/July), Washington, DC. The Subcommittee will discuss with the NRC research staff and the personnel from the Sandia National Laboratories the progress of the "Scoping Study" being performed by the Sandia National Laboratories for NRC on the need for future research in the fire protection area.

Thermal Hydraulic Phenomena, Date to be determined (July/August), Washington, DC. The Subcommittee will review: (1) MIST Program Status (including IST Scaling Coordination), (2) Uncertainty Methodology for BE ECCS Codes, and (3) Activities vis-a-vis Water Hammer.

Generic Items, Date to be determined (July/August), Washington, DC. The Subcommittee will continue the discussion on the effectiveness of the programs that address generic issues and USIs. Also, it will discuss with selected licensees the contribution to plant safety resulting from the implementation of the resolved generic issues and USIs.

Decay Heat Removal Systems, Date to be determined (July/August), Washington, DC. The Subcommittee will review: (1) The resolution status for GI 23: "RCP Seal Failure" and (2) the resolution status for GI 124: "AFW System Reliability".

Thermal Hydraulic Phenomena, Date will be determined (September/October), Washington, DC. The Subcommittee will review: (1) Final version of revised ECCS Rule, and (2) status of RES-proposed new integral test facility.

Joint Seabrook/Occupational and Environmental Protection Systems/Severe Accidents, Date to be determined, Washington, DC. The Subcommittees will review Brookhaven National Laboratory's draft report of the Seabrook Emergency Planning Sensitivity Study.

Seabrook Unit 1, Date to be determined, Washington, DC. The Subcommittee will review the application for a full power operating license for Seabrook Unit 1.

ACRS Full Committee Meeting

April 9–11, 1987: Items are *tenatively* scheduled.

*A. *Quantitative Safety Goals (Open)*—Review of proposed NRC staff plan for implementation of NRC quantitative safety goals.

*B. *TVA Nuclear Performance (Open)*—Briefing and discussion of TVA Nuclear Performance Plan—Corporate.

*C. *Meeting with NRC Commissioner (Open)*—Discuss ACRS report dated January 15, 1987 entitled Recommendations on Improved Safety for Future Light Water Reactor Plant Design.

*D. *Fitness for Duty (Open)*—Briefing of ACRS regarding application of NRC rule regarding fitness for duty of licensee personnel and status of rule/policy regarding NRC personnel.

*E. *NRC Regulatory Guide (Open)*—Discuss proposed publication for comment of proposed NRC regulatory guide regarding Environmental Qualification of Connector Assemblies for Nuclear Power Plants.

*F. *Nuclear Facility Operating Experience (Open/Closed)*—Briefing and discussion regarding recent incidents and events at nuclear facilities.

*G. *I&E Activities (Open)*—Discuss items of mutual interest.

*H. *Foreign Nuclear Power Plants (Open/Closed)*—Discuss safety features in foreign nuclear power plants which are not required in U.S. plants.

*I. *Reactor Safety Research Program (Open)*—Discuss the basis for the ACRS

annual report to the NRC on the proposed NRC safety research program and budget.

May 7–9, 1987—Agenda to be announced.

June 4–6, 1987—Agenda to be announced.

Dated: March 12, 1987.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 87–5723 Filed 3–16–87; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 1 to Regulatory Guide 4.17, "Standard Format and Content of Site Characterization Plans for High-Level-Waste Geologic Repositories," presents up-to-date guidance on the types of information that should be included in a site characterization plan for review by the NRC staff. The guide also presents a format for presenting this information.

Comments and suggestions in connection with: (1) Items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 275–2060 or (202) 275–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 10th day of March 1987.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 87–5728 Filed 3–16–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–185]

Reinstatement and Renewal of Facility Operating License, National Aeronautics and Space Administration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 3 to Facility Operating License No. R–93 for the National Aeronautics and Space Administration (the licensee) which reinstates and renews the license for possession-only of the Plum Brook Mock-Up Reactor located at the Plum Brook Reactor Facility near Sandusky, Ohio. The facility is a non-power reactor that had operated at power levels not in excess of 100 kilowatts (thermal). The reinstated and renewed Operating License No. R–93 will expire ten years from the date of issuance.

The amended license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I. Those findings are set forth in the license amendment. Opportunity for hearing was afforded in the notice of the proposed issuance of this reinstatement and renewal in the **Federal Register** on August 12, 1986 at 51 FR 28908. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has prepared a Safety Evaluation for the reinstatement and renewal of Facility Operating License No. R–93 and has, based on that evaluation, concluded that the facility can be possessed by the licensee without endangering the health and safety of the public.

For further details with respect to this action, see (1) The application dated July 26, 1985, (2) Amendment No. 3 to Operating License R–93, and (3) the Commission's related Safety Evaluation. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Dated at Bethesda, Maryland, this 12th day of January 1987.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Standardization and Special, Projects Directorate, Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.

[FR Doc. 87–5727 Filed 3–16–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–361 and 50–362]

Southern California Edison et al.; Withdrawal of Application for Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (The Commission) has granted the request of Southern California Edison Company (SCE), on behalf of itself and San Diego Gas and Electric Company, The City of Riverside, California and the City of Anaheim, California (the licensees), to withdraw a portion of its March 7, 1984 application (which was superseded by another application dated March 17, 1986), for proposed amendments to Facility Operating License Nos. NPF–10 and NPF–15, which authorize operation of the San Onofre Nuclear Generating Station, Units 2 and 3, located in San Diego County, California. The proposed amendments would have revised Technical Specification 4.8.1.1.2.c to determine the operability of the diesel generator should the diesel fuel oil fail to meet the test for insolubles. The Commission issued a Notice of Consideration of Issuance of Amendments in the **Federal Register** on May 21, 1985 (50 FR 20991). By letter dated September 30, 1986, SCE withdrew this portion of its application for the proposed amendments. The Commission has considered the September 30, 1986 letter and has determined that permission to withdraw this portion of the application for amendments should be granted.

For further details with respect to this action, see: (1) The application for amendments dated March 7, 984; (2) the application for amendments dated March 17, 1986; and (3) the SCE letter, dated September 30, 1986, withdrawing a portion of the application for license amendments. The above documents are available for public inspection at the Commission Public Document Room, 1717 H Street, NW., Washington, DC and at the General Library, University of California at Irvine, Irvine, California 92713.

Dated at Bethesda, Maryland this 9th day of March, 1987.

For the Nuclear Regulatory Commission.
George W. Knighton,
Director, PWR Project Directorate No. 7, Division of PWR Licensing-B.
[FR Doc. 87-5725 Filed 3-16-87; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-271-OLA; (ASLBP No. 87-547-02-LA)]

Atomic Safety and Licensing Board (Vermont Yankee Nuclear Power Station); Prehearing Conference

Before Administrative Judges: Charles Bechhoefer, Chairman; Glenn O. Bright, Dr. James H. Carpenter.
March 11, 1987.

Notice is hereby given that, in accordance with the Atomic Safety and Licensing Board's Memorandum and Order dated February 27, 1987 (LBP-87-7), a prehearing conference in this proceeding involving the proposed expansion of the spent fuel pool of the Vermont Yankee Nuclear Power Station will commence at 9:30 a.m. on Tuesday, April 21, 1987, at the U.S. District Court, Post Office and Courthouse Building, 204 Main Street, Brattleboro, Vermont. The conference will continue at 9:00 a.m. on Wednesday, April 22, 1987.

Among matters to be considered at the conference are the intervention petitions submitted by three petitioners for intervention; delineation of the key issues or contentions in the proceeding; the hybrid hearing procedures set forth in 10 CFR Part 2, Subpart K, which are to be followed in this proceeding; the establishment of schedules for discovery, for further prehearing conferences (if, necessary) and for oral argument on the contentions; possiblities of settlement of various issues; and such other matters as may aid in the orderly disposition of the proceeding. Parties or petitioners for intervention who wish to submit a proposed agenda for the conference, specifying matters they wish to have discussed, are invited to do so. Such a proposed agenda should reach the Board and parties/petitioners no later than Friday, April 17, 1987.

In accordance with 10 CFR 2.715(a), the Board will hear oral limited appearance statements at this prehearing conference. Any person not a party to the proceeding or a petitioner for intervention will be permitted to make such a statement, either orally or in writing, setting forth his or her position on the issues. These statements do not constitute testimony or evidence in this proceeding, but may help the Board and/or parties in their deliberations on the extent of the issues to be considered. Oral limited appearance statements will be heard from 9:00-10:00 a.m. on Wednesday, April 22, 1987 (or such lesser time as is necessary to accommodate speakers who are present). The number of persons making oral statements and the time allotted for each statement may be limited depending on the number of persons present at the designated time. (The Board expects to hear additional limited appearance statements at other sessions of the proceeding.) Written statements may be submitted at any time. Written statements, and requests for oral statements, should be submitted to the Office of the Secretary, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, 1717 H Street, NW., Washington, DC 20555. A copy of such a statement or request should also be served on the Chairman, Atomic Safety and Licensing Board.

Documents relating to this application are on file at the Local Public Document Room, located at the Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301, as well as at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555.

For the Atomic Safety and Licensing Board.
Dated at Bethesda, Maryland this 11 day of March, 1987.
Charles Bechhoefer,
Chairman, Administrative Judge.
[FR Doc. 87-5724 Filed 3-16-87; 8:45 am]
BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-15614; File No. 812-6619]

Prudential-Bache High Yield Fund, Inc. and Prudential-Bache Securities Inc.; Overissuance of Mutual Fund Shares

March 10, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for retroactive exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Prudential-Bache High Yield Fund, Inc. (the "Fund") and Prudential-Bache Securities Inc. ("Prudential-Bache").

Relevant 1940 Act sections: Retroactive exemption requested pursuant to section 6(c) from sections 18(f); 22(c) and Rule 22c-1 thereunder.

Summary of application: Applicants seek retroactive exemptive relief for (i) the sale of Fund shares beyond the amount authorized by Fund's charter and (ii) the subsequent rescission offer by the Applicants to the holders of such Fund shares, as described below.

Filing date: The application was filed on February 6, 1987.

Hearing or notification of hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on April 2, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notifications of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Prudential-Bache Securities Inc., One Seaport Plaza, New York, New York 10292.

FOR FURTHER INFORMATION CONTACT: Denis R. Molleur, Staff Attorney (202) 272-2363 or Brion R. Thompson, Special Counsel (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application, the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations and Arguments

1. The Fund, a Maryland corporation, is a diversified open-end, management investment company registered under the 1940 Act. The investment objective of the Fund is to maximize current income through investment in a diversified portfolio of high yield, fixed-income securities which in the opinion of the Fund's investment adviser do not subject a fund investing in such securities to unreasonable risks.

2. As of November 20, 1985, the Fund had issued all of its 50,000,000 shares of authorized Common Stock. Through January 28, 1986, the Fund inadvertently sold approximately 25,800,000 additional shares of its Common Stock, including reinvestment of the regular dividends paid in December 1985 and January 1986 as though these shares were authorized ("Overissue Shares"). When management of the Fund became aware of this situation on January 20, it discontinued the further sales of Fund shares, except for reinvestment of the

regular monthly dividend paid on January 28, 1986.

3. On February 7, 1986, the Fund and Prudential-Bache offered to rescind the purchase of the Overissue Shares at the higher of (i) purchase price plus interest less any dividends paid or (ii) the regular redemption price (less any applicable contingent deferred sales charge) on the date of any acceptance of the rescission offer. To the extent the rescission price was in excess of the regular redemption price, Prudential-Bache has agreed to pay the difference to the stockholder. As a result, from the Fund's point of view both the Overissue Shares and the authorized stock were treated exactly alike. Also on February 7, 1986, the Fund mailed a Proxy Statement to all the stockholders of record as of January 21, 1986. The Proxy Statement was furnished in connection with the solicitation of stockholders to approve an amendment to the Fund's Articles of Incorporation to increase the total number of authorized shares of Common Stock from 50,000,000 shares ($.01 par value) to 500,000,000 shares ($.01 par value). The Proxy Statement disclosed that stockholders would be offered the opportunity to rescind their purchases of Overissue Shares on the basis described above, and that, if the amendment were approved, an appropriate number of newly authorized shares would be applied to the Overissue Shares than outstanding at the close of business on the date of the stockholder vote. The Fund received the necessary stockholder approval at the Special Meeting of Stockholders on February 20, 1986, and thereafter outstanding Overissue Shares were exchanged for duly authorized shares. Also on February 20, 1986, the rescission offer expired and 280 holders of Overissue Shares had exercised their right of rescission in respect of 243,185,852 Overissue Shares.

4. The Applicants seek retroactive exemptive relief from section 18(f) of the 1940 Act in connection with the sale of the Overissue Shares and the rescission offer. The sale of the Overissue Shares and the rescission offer by the Applicants might be viewed to constitute the issuance of a "senior security" within the meaning of section 18(f). It may be argued that the holders of the Overissue Shares acquired, at the time and sale, a right to rescind their purchase and that such right and consequent obligation of the Fund to reimburse the purchase price constitute a "senior security" of the Fund as defined and prohibited in section 18(f), but neither contravened the policy behind section 18(f).

5. Under Maryland State law, the holders of the Overissue Shares are entitled under legal and equitable principles, to be treated as nearly as practicable as if they were stockholders of the Fund. Nevertheless, the bundle of rights represented by the Overissue Shares are not "stock" or "securities" under Maryland State law. In addition, the rescission offer to holders of the Overissue Shares does not give rise, and have never been held to give rise to, a "stock" or a "security" under the 1940 Act, the Securities Act of 1933 or the Securities Exchange Act of 1934. Holders of the Overissue Shares did, however, have a reasonable expectation of receiving such shares and had legal claims (including rescission) that they could assert against the Fund, if such expectations were not fulfilled.

6. The fact that the rescission offer provides certain shareholders with the opportunity to receive additional monies from a person other than the issuer does not create a senior security of the issuer under section 18(f) and thus does not contravene the policy of the prohibition. Furthermore, the redemption price of all the Fund's outstanding shares were the same.

7. The basic policy underlying section 18(f) is to limit the extent to which a registered open-end investment company can engage in leveraging by investing borrowed money, with the consequent increased risk for its stockholders. Leveraging, in the traditional sense, however, was not involved with either the Overissue Shares or the rescission offer because to the extent that claims against the Fund might have been created, the Fund in no event would have had to pay more than the equivalent of their then current net asset value, Prudential-Bache having agreed to pay any amount equal to the difference between such value and the purchase price, all as described above. Further, it should be noted that if any "senior security" was created, it was temporary, terminating when Fund stockholders authorized the increase in the number of authorized shares.

8. The Applicants also seek exemption from the provisions of section 22(c) of the 1940 Act and Rule 22c-1 thereunder to the extent necessary to authorize retroactively (i) the issuance of shares to cover the Overissue Shares and (ii) the rescission offer by the Applicants to the holders of the Overissue Shares at prices other than "the current net asset value" per share of the Fund at the time of issuance as required by Rule 22c-1.

9. The rescission offer did not result in the dilution in value of the outstanding shares of the Fund's Common Stock. All Overissue Shares were issued and redeemed at the same price as the authorized Fund Shares, the then current net asset value per share. No holder of Overissue Shares exercised his or her right of rescission at a price in excess of the then current net asset value per share. Moreover, had the net asset value of the Common Stock declined against the purchase price of the Overissue Shares resulting in the rescission price being greater than the then current net asset value, Prudential-Bache and not the Fund would have been liable for the excess of the rescission price over the applicable regular redemption price as well as administrative expenses incurred while correcting the problem. Consequently, the rescission offer did not and could not have a dilutive effect.

10. The rescission offer did not constitute a "speculative trading practice," which Rule 22c-1 was designed to prevent. Purchases of the Overissue Shares had been confirmed in the normal course of business before the rescission offer was announced.

11. It is necessary and appropriate for the requested relief to be granted retroactively. The Applicants believe that the status of the holders of Overissue Shares had to be fully regularized as soon as possible so that the holders of such shares could participate in all rights of shareholders pertaining to such shares without fear of legal recourse. Consequently, the Applicants made the rescission offer and the Fund's stockholders approved the increase in the authorized number of shares to cover the Overissue Shares prior to obtaining exemptive relief from the Commission. The Overissue Shares and rescission offer did not contravene the public policies underlying section 18 of the 1940 Act and Rule 22c-1 and such transactions were undertaken in a good faith effort to rectify a technical oversight. The Fund and all of its stockholders were treated equitably as if the oversight had never occurred and Prudential-Bache undertook to pay the expense of correcting the problem and to indemnify the Fund for the excess of any rescission price over the applicable regular redemption price.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-5702 Filed 3-16-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No 34-24196; File No. SR-CBOE-86-41]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inco.; Order Approving Proposed Rule Change

On January 2, 1987, the Chicago Board Options Exchange, Incorporated ("CBOE") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder, [2] a proposed rule change to allow the listing of additional exercise prices in Swiss franc currency option contracts.

The proposed rule change was noticed in Securities Exchange Act Release No. 24025 (January 23, 1987), 52 FR 3724 (February 5, 1987). No comments were received on the proposed rule change.

The rule change is designed to facilitate transactions in Swiss franc curreny option contracts. The purpose of this proposed rule change is to allow the CBOE to add one-half point exercise prices in Swiss franc currency option contracts, so that the gap between strike prices quoted in European (used in the over-the-counter market) and American (used in exchange markets) contracts is reduced.[3] This would encourage market participants to use more often the Swiss franc options traded on the CBOE. The CBOE contends that the statutory basis for the proposed rule change is section 6(b)(5) of the Act in that it is designed to facilitate transactions in Swiss franc foreign currency option contracts.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder because it will encourage the use of standardized foreign currency options rather than conventional options.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1985).

[3] Currently, only the Canadian dollar option contracts traded on the CBOE have one-half point exercise prices.

Dated: March 9, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-5706 Filed 3-16-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-24195; File No. SR-PHLX-87-3]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Delta Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 24, 1987, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX"), pursuant to Rule 19b-4 of the Securities Exchange Act of 1934 ("Act"), proposes to amend PHLX Rule 1066(c)(4) and Option Floor Procedure Advice B-4 as follows: (Brackets indicate deletions; italics indicate additions.)

Applicability and Definitions

Rule 1066(a)-(c) No change.

(c)(4) A "Delta Order" is a contingency order that is dependent upon the amount an options price changes in relation to a corresponding change in price of the underlying security.

Option Floor Procedure Advice B-4
Trading From Off-Floor

A Registered Options Trader may not enter from off the floor opening orders for his market maker account. A Registered Options Trader may only enter from off the floor opening orders for their customer account.

A Registered Options Trader may enter from off the floor closing orders for either his market maker or customer account.

For purposes of priority and parity, an order which is placed from off the floor by a Registered Options Trader who has been on the floor on the same day is to be treated as an on-floor order by the Registered Options Trader. If this order is an opening order, it must yield to other customer orders.

A Registered Options Trader who enters an order from off the floor must tell his phone clerk whether such order is opening or closing and whether it is for a customer or market maker account.

While on the floor, a Registered Options Trader may enter Good-til-Cancelled ("GTC") orders with a Floor Broker or with the Specialist which would, if executed, open a position in his market maker account, and such orders may be executed for the market maker account even if the Registered Options Trader has left the floor.

If a Registered Options Trader, from off-the-floor, effects a change in the terms of an order (e.g., security price, volume, series, class) which was initiated while he was on the floor, such changed order must be executed in his customer account.

A Registered Options Trader shall not give discretion to a Floor Broker and shall not give a Floor Broker "not held" orders. *With respect to delta orders placed with a Floor Broker for the account of a Registered Options Trader, such orders may only be placed as day orders and must have the applicable delta legibly recorded on both the broker's floor ticket and the Registered Options Trader's record of the order.*

A Registered Options Trader who is closing a position, whether for his market maker or customer account, is on parity with all off-floor orders including those of Registered Options Traders who are also closing their positions. A Registered Options Trader who is on the floor may for his customer account execute closing transactions without utilizing a Floor Broker.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A delta order is a contingency order that is dependent upon the amount an option price changes in relation to a

change in the price of the underlying security. When a delta order is given by a registered options trader to a floor broker, in order to eliminate the possibility that such order is giving the floor broker discretion to trade for the registered options trader, the proposed rule change would require that such orders must specify the applicable delta and be good for only one trading day.

The proposed rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 in that it will facilitate transactions in securities and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 7, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 9, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-5703 Filed 3-16-87; 8:45 am]

BILLING CODE 8010-01-M

[Re. No. IC-15615 (File No. 812-6575)]

The First Trust of Insured Municipal Bonds et al.; Application

March 10, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: The First Trust of Insured Municipal Bonds, The First Trust Combined Series, The First Trust GNMA ("Funds") and Clayton Brown & Associates, Inc. ("Sponsor").

Relevant 1940 Act sections: Exemption requested under section 6(c) of the 1940 Act from section 22(c) of the 1940 Act and Rule 22c-1 thereunder.

Summary of application: Applicants seek an order to permit them to offer units of fractional undivided interest ("Units") of each future Series ("Series") of each Fund, and such other unit investment trusts as may be sponsored in the future by the Sponsor, on the date of deposit of the Fund at a price other than the price next computed after receipt of a purchase order.

Filing date: The Application was filed on December 29, 1986.

Hearing or notification of hearing: If no hearing is ordered, an order disposing of the application will be issued. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC no later than 5:30 p.m., on April 3, 1987. Requests must be in writing, setting forth the nature of your interest, the reasons for the request, and the issues contested. Applicants should be served with a copy of the request, either personally or by mail, and the request should also be sent to the Secretary of the SEC, along with proof of service (by affidavit or, in the case of an attorney-at-law, by certificate). Notification of the date of a hearing should be requested by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicants, 300 West Washington Street, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Special Counsel Curtis R. Hilliard (202) 272-3026 or Special Counsel H. R. Hallock, Jr. (202) 272-3030, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete discrimination is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Each Series of a Fund is created under New York law by a separate Trust Agreement between the Sponsor and a trustee. As of December 20, 1986, approximately 180 separate Series of the Funds have been offered. The underlying securities of each Series consist of either medium or long term municipal or governmental debt obligations ("Securities"). Upon determining to offer a Series, the Sponsor files with the Commission under the Securities Act of 1933 ("1933 Act") the documents necessary to register for sale Units of the particular Series. The Trust Agreement is signed and the Sponsor deposits (with the trustee) Securities or contracts to purchase Securities accompanied by an irrevocable letter of credit in an amount sufficient to complete the purchase in exchange for certificates for Units representing the entire ownership of that Series.

2. Applicants propose to offer Units of each future Series to the public at a public offering price determined as of 3:00 p.m. on the business day preceding receipt of the purchase order or such later time as may be appropriate ("backward pricing") for the first day of the initial offering period for each such Series (the "Date of Deposit"). Since the public offering price so determined will be effective for all sales of the Units until such time on the Date of Deposit, the "forward pricing" requirement of Rule 22c-1 under the Act would not be met. However, Applicants propose to eliminate "backward pricing" with respect to a Series if the price for units of such Series decreases on the Date of Deposit. For trades on the Date of Deposit, if the price per Unit increases,

the price indicated in the related prospectus will apply, but if such price decreases, such lower price will be charged.

3. The forward pricing requirements of Rule 22c-1 are often confusing to investors who purchase Units on the Date of Deposit, particularly when the Unit price increases from the day preceding the Date of Deposit. Investors purchasing Units on the Date of Deposit can be confused in two ways. First, the price of Units is normally calculated to create a market price as of the close of business on the day before the Date of Deposit equal to $1,000 per Unit (with respect to The First Trust GNMA all amounts set forth herein are per 1,000 Units). This is the price shown in the related prospectus (which happens to be dated the Date of Deposit). In order to accomplish the $1,000 price, a sufficient number of Units are created so that the aggregate offering price of the underlying portfolio Securities plus the applicable aggregate sales charge divided by 1,000 equal the number of Units. As a consequence of this pricing practice, brokers quote to prospective investors a price of $1,000 per Unit and should the price of the underlying Securities actually change during the Date of Deposit, confirmations are sent with the revised price (which is required by the forward pricing procedure). Upon receipt of this revised confirmation investors are often confused since they believe they purchased Units for exactly $1,000 per Unit, especially when they have also received a current prospectus with the $1,000 price indicated. Particularly in the situation where prices have increased, investors may contact their brokers for an explanation since they are required to pay more than was quoted. Assuming that a broker understands forward pricing requirements, explaining the procedure to investors at a minimum can be time consuming and may in fact be quite difficult. Adding to this confusion is the fact that the actual estimated current return, which is alleged to be perhaps the most significant factor in making an investment decision relating to unit investment trusts, will be somewhat different from that quoted by the broker and indicated in the prospectus. Backward pricing on the Date of Deposit both removes investor confusion, regarding pricing and insures the investor of his anticipated estimated current return.

4. Even though Applicants believe that backward pricing on the Date of Deposit is necessary to remove investor price confusion and insure that quoted returns equal actual ones, Applicants currently believe that on balance when prices decrease on the Date of Deposit investor confusion is outweighed by the benefit of lower prices per Unit (and resulting increase in estimated current return). Consequently, Applicants propose to eliminate all backward pricing if the price decreases on the Date of Deposit. Thus, for trades on the Date of Deposit, if the price per Unit increases on the Date of Deposit, the price indicated in the related prospectus will apply, but if such price decreases, such lower price will be charged.

5. Rule 22c-1 has two purposes: (1) To eliminate or reduce any dilution of the value of outstanding redeemable securities of registered investment companies which might occur through the practice of selling securities at a price based upon a previously established value which permits a potential investor to take advantage of an upswing in the market and an accompanying increase in the value of investment company shares by purchasing such shares at a price which does not reflect such increase, and (2) to minimize speculative trading practices which so compromise registered investment companies as to be unfair to the holders of their outstanding securities. The proposed backward pricing of Units will not undermine or contravene the purposes of Rule 22c-1. Since the Sponsor and the other underwriters, having deposited all of the Securities, own all of the Units, and the price at which the Sponsor and the other underwriters sell those Units can affect only the Sponsor and the other underwriters and not the value of the Securities nor the fractional undivided interest in the Securities represented by each Unit outstanding, dilution of the Fund is not relevant.

6. The possible speculative features relating to backward pricing are of such a limited nature as to be a practical impossibility. Of the 49 trusts of the various Funds initially offered during 1986, the average daily price change on the Date of Deposit was $1.42 per Unit (or .013% of the initial public offering price). The largest price change was only $6.98 per Unit and the estimated current returns were affected on average by .01% with the largest change being .06%. In light of the applicable sales charges (which currently range from $30 to $49 per Unit depending on the type and maturity of the Series) and the difference between offering prices of the underlying Securities (which are the prices used to compute the initial public offering prices) and the bid prices thereof (which are used to compute redemption prices) (generally a difference of between $10 and $25 per Unit), such one day price changes do not approach the transactional costs related to any attempted speculation by investors. Even though each Fund is comprised of longer term securities, the volatility of market prices in any one day simply is not of such a magnitude to overcome the related costs of speculation. Even if the volatility existed, it is unlikely that a prospective investor would know what specific Securities are in a portfolio before he gets a prospectus, how much principal amount of each Security will be included or the market prices related thereto (since such Securities are not traded on any exchange), and therefore it will be practically impossible for an investor to accurately determine the amount, if any, of a change in the net asset value of the Fund on the Date of Deposit.

7. Since the Sponsor and certain of the underwriters intend to maintain a market for Units, to allow immediate redemptions to occur is both disruptive and expensive because the current prospectus would have to be supplemented to indicate exchanges in the underlying portfolio resulting from sales of Securities to meet redemptions. Such costs would be borne by the Sponsor. Moreover, the Sponsor, underwriters and dealers have less incentive to speculate since they already share in the sales charge. Consequently, even if the practical limitations discussed above were ignored and the extremely unlikely possibility of a large one day price increase occurred, the profits generated, not to mention the goodwill created with investors, greatly mitigates against speculation. Nevertheless, because speculation is still a remote possibility, Applicants propose to ban any redemptions during the first 30 days of an initial offering period of a series of a Fund by the Sponsor, other underwriters and dealers.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-5704 Filed 3-16-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15613; 812-6564]

Transamerica Life Insurance and Annuity Co. et al.; Application

March 9, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

Applicant(s): Transamerica Life Insurance and Annuity Company, ("Transamerica Life") Separate Account VA-1 of Transamerica Life Insurance and Annuity Company ("Separate Account") and Transamerica Insurance Securities Sales Corporation.

Relevant 1940 Act sections: Exemption requested under section 6(c) from sections 26(a)(2) and 27(c)(2).

Summary of application: Applicants seek an order to permit Transamerica Life to deduct from the Separate Account the mortality and expense risk charges imposed under the contract, a deferred variable annuity contract.

Filing date: December 17, 1987.

Hearing or notification of hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 3, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant(s) with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Transamerica Life Insurance and Annuity Company, Separate Account VA-1 of Transamerica Life Insurance and Annuity Company and Transamerica Insurance Securities Sales Corporation at 1150 South Olive, Los Angeles, CA 90015.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Denise M. Furey (202) 272-2067 or Special Counsel Lewis B. Reich (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Separate Account was established in connection with the proposed issuance of deferred variable annuity Contracts ("Contracts").

2. The Separate Account will invest in shares of the American Life/Annuity Series ("Series"). The Series, a diversified, open-end management investment company, has five Funds: the Cash Management Fund; the Growth Fund; the High Yield Bond Fund; Growth Income Fund and the U.S. Government Guaranteed/AAA Corporate Securities Fund. The Separate Account has five subaccounts, each of which invests soley in a specific corresponding Series of the Fund.

3. Transamerica Life imposes a charge to compensate it for bearing certain mortality and expense risks under the Contracts. The mortality risk borne by Transamerica Life arises from its obligation to make monthly annuity payments regardless of how long all annuitants may live; and the expense risk is that the deductions for contingent deferred sales charges and administration costs under the Contracts may be insufficient to cover the actual future costs incurred by Transamerica Life.

4. The mortality and expense risk charge is a reasonable charge to compensate Transamerica Life for the risk that annuitants under the Contracts will live longer as a group than has been anticipated in setting the annuity rates guaranteed in the Contracts; for the risk that administrative expenses will be greater than amounts derived from the administrative charge; and for the risk that the amounts realized from the contingent deferred sales charge will be insufficient to cover actual distribution costs.

5. Transamerica Life represents that the charge of 1.25% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. This representation is based upon Transamerica Life's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates.

6. Transamerica Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account and contractowners.

Applicant's Conditions

If the requested order is granted, the Applicant agrees to the following conditions:

1. Transamerica Life will maintain at its home office and make available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, Transamerica Life's comparative survey of competitive annuity products.

2. Transamerica Life will maintain and make available to the Commission upon request a memorandum setting forth the basis of its conclusion that the Separate Account's distribution financing arrangement will benefit the Separate Account and contractowners.

3. The Separate Account will only invest in open-end management investment companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end management company, formulate and approve any plan pursuant to Rule 12b-1 under the Act to finance distribution expenses.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-5705 Filed 3-16-87; 8:45 am]

BILLING CODE 8010-01-M

Small Business Administration

[License No. 09/09-0314]

Ivanhoe Venture Capital, Ltd.; Application for Change in Ownership and Control

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.601 of the Regulations governing small business investment companies (CFR 107.601 (1987)) for change in ownership and control of Ivanhoe Venture Capital, Ltd., 737 Pearl Street, Suite 201, La Jolla, California 92037, a Federal Licensee under the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*). The proposed change in control of Ivanhoe Venture Capital, Ltd., which was licensed December 29, 1982, is subject to the prior written approval of SBA.

Pacifica Management Company, Inc. (Pacifica), proposes to acquire a 52.96 percent limited partnership interest and become a Corporate General Partner in Ivanhoe Venture Capital, Ltd. Under § 107.3 of the SBA Regulations, Pacifica is defined as a Control Person.

General Partners, and Partnership Interest Owned:

Alan R. Toffler, General Partner, 7453 Fairway Road, La Jolla, California 92037—6.91%

P. Frederick Wulff, General Partner, 8148 Avenida Navidad, San Diego, California 92122—1.65%

Pacifica Management General Partner, Company, Inc., 1660 Hotel Circle North,

Suite 310, San Diego, California 92108—52.96%
Susan M. D'Onofrio, Limited Partner, 6486 Calle Del Norte, Anaheim Hills, California 92087—9.61%

Officers, Directors, and 10 or more percent shareholders of Pacifica Management Company, Inc.:

Robert F. Harper, Chairman, 15455 Glen Oak Blvd., #332, Sylmar, California 91342—80%
Peter Dine, President, 1205 Santa Luisa Dr., Solana Beach, California 92095
John C. DePuy, Vice President, P.O. Box 1665, Rancho Santa Fe, California 92067
Edward F. Myers, Secretary, 505 Camino Elevado, Bonita, California 92002
Exten Ventures, Inc., 1660 Hotel Circle North, Suite 310, San Diego, California 92108—20%

Officers, Directors, and 10 or more percent Shareholders of Exten Ventures, Inc.:

John C. DePuy, Chairman, P.O. Box 1665, Rancho Santa Fe, California 92067—35%
Edward F. Myers, President/Treasurer, 505 Camino Elevado, Bonita, California 92002—33%

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the Partnership under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L. Street NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in La Jolla, California.

(Catalog of Federal Domestic Assistance Program No. 59.001. Small Business Investment Companies)

Dated: March 10, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87-5647 Filed 3-16-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[CM-8/1055]

Overseas Security Advisory Council Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on Thursday, April 9, 1987 at 09:00 a.m. in the offices of The Coca-Cola Company, 1 Coca-Cola Plaza, Atlanta, Georgia. Pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(4), it has been determined the meeting will be closed to the public. Matters relative to privileged commercial information will be discussed. The agenda calls for the discussion of private sector physical security policies, bomb threat statistics, and security programs at sensitive U.S. Government and private sector locations overseas.

Dated: March 5, 1987.

Roger H. Robinson,

Acting Deputy Assistant Secretary for Diplomatic Security.

[FR Doc. 87-5672 Filed 3-16-87; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 87-014]

Lower Mississippi River Waterway Safety Advisor Committee Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-403; 5 U.S.C. App I) notice is hereby given of a meeting of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Tuesday April 21, 1987, in the 9th Floor Boardroom of the World Trade Center, 2 Canal Street, New Orleans, LA. The meeting is scheduled to begin at 9:00 a.m. and end at 12:00 noon.

The agenda for the meeting consists of the following items:

1. Call to Order.
2. Minutes of the January 27, 1987, meeting.
3. Presentation of summary of documentation required for master of floating plants.
4. Discussion of VTS watchstander qualifications.
5. Report of communications working group.
6. Report of working group on preparation of draft regulations.
7. Surveillance system presentation.
8. Formation of working group to design VTS New Orleans operations manual and procedures.
9. Adjournment.

The purpose of this Advisory Committee is to provide consultation and advice to the Commander, Eighth Coast Guard District on all areas of maritime safety affecting this waterway.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander D.F. Withee, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, telephone number (504) 589-6901.

Dated: February 24, 1987.

E.B. Acklin,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard District, Acting.

[FR Doc. 87-5652 Filed 3-16-87; 8:45 am]

BILLING CODE 4910-14-M

[CGD3 87-05]

New York Harbor Traffic Management Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advieory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the New York Harbor Traffic Management Advisory Committee to be held on April 7, 1987, in the Conference Room, second floor, U.S. Coast Guard Marine Inspection Office, Battery Park, New York, New York, beginning at 10:00 a.m.

The agenda for this meeting of the New York Harbor Trafic Management Advisory Committee is as follows:

1. Introduction of Committee Sponsor, Committee members, and Coast Guard officers.
2. A report by the Coast Guard on the status of any new initiatives on the part of the Department of Transportation with regard to regular drug testing programs which might be applicable to members of the maritime industry.
3. An explanation by the Coast Guard of any applicable Federal Aviation Administration rules pertaining to the operation of vessels and aircraft in designated water landing zones. This discussion will be oriented toward the new heloport opening at the foot of Wall Street, Manhattan.
4. A report from the Vessel Traffic Service on the effect of extending the Service's East River boundary to the Whitestone Bridge.
5. A progress report from the Vessel Traffic Service on the installation of new television cameras at existing observation sites.
6. Other topics which might arise and the committee agrees should be addressed at the time.
7. Review of agenda topics and selection of date for next meeting.

The New York Harbor Traffic Management Advisory Committee has been established by Commander, Third Coast Guard District to provide information, consultation, and advice with regard to port development, maritime trade, port traffic, and other maritime interests in the harbor. Members of the Committee serve

voluntarily without compensation from the Federal Government.

Attendance is open to the interested public. With advance notice to the Chairperson, members of the public may make oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Captain R.J. Heym, USCG, Executive Secretary, NY Harbor Traffic Management Advisory Committee, New York Vessel Traffic Service, Governors Island, New York, NY 10004; or by calling (212) 668-7954.

Dated: March 2, 1987.

G.D. Passmore,

Rear Admiral (Lower Half), U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 87-5653 Filed 3-16-87; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 135; Environmental Conditions and Test Procedures for Airborne Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 135 on Environmental Conditions and Test Procedures for Airborne Equipment to be held on April 7-8, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Remarks; (2) Approve Minutes of the Seventh Meeting; (3) Review Comments to Draft Section 22, Lightning Induced Transient Susceptibility; (4) Review of ISO Member Body Comments; (5) Review Section 20, Radio Frequency Susceptibility; (6) Review Status of Chapter 23, Lightning Direct Effects; (7) Proposed Change to Section 21, Emission of Radio Frequency Energy; (8) Proposed Change to Section 7, Operational Shocks and Crash Safety; (9) Change to Note 2 in Paragraph 4.5.2 to Clarify Requirement for Ground Survival Test; (10) Update for Helicopter Vibration Test Curves; (11) Vibration Test Levels for Aircraft with UHB Engines; (12) Revision to Section 11 to Permit Simultaneous Testing of Fluids; (13) Review of Section 13, Fungus Resistance; (14) Miscellaneous Changes to Section 16 and Appendix A; (15) Update Change Coordinator List; (16) Method and Schedule for Updating DO-160B; (17) Other Business; and (18) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, N.W., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 9, 1987.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 87-5637 Filed 3-16-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TREASURY

Fiscal Service

[Dept. Circ. 570. 1986 Rev. Supp. No. 15]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Mead Reinsurance Corp.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Mead Reinsurance Corporation, under the United States Code, Title 31, sections 9304-9308, to qualify as an acceptable surety on Federal bonds is terminated effective this date.

The Company was last listed as an acceptable surety on Federal bonds at 51 FR 23942, July 1, 1986.

With respect to any bonds currently in force with Mead Reinsurance Corporation, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226; telephone (202) 634-2119.

Dated: March 10, 1987.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 87-5708 Filed 3-16-87; 8:45 am]

BILLING CODE 4810-35-M

VETERANS ADMINISTRATION

Medical Research Service Merit Review Boards; Notice of Meetings

The Veterans Administration gives notice pursuant to Pub. L. 92-463 of the meetings of the following Merit Review Boards.

Merit Review Board	Date	Time	Location
Cardiovascular Studies.	Mar. 30, 1987	8 a.m. to 5 p.m.	Room 119, VA, Central Office.[1]
Do	Mar. 31, 1987	do	Do.
Alcoholism and Drug Dependence.	Apr. 1, 1987	8 a.m. to 5 p.m.	Do.
Gastroenterology	Apr. 6, 1987	8 a.m. to 5 p.m.	Room 119, VA, Central Office.
	Apr. 7, 1987	do	Do.
Immunology	Apr. 10, 1987	do	Do.
	Apr. 11, 1987	do	Do.
Oncology	Apr. 15, 1987	7 p.m. to 10 p.m.	Vista Hotel.[2]
Do	Apr. 16, 1987	8 a.m. to 5 p.m.	Do.
Neurobiology	Apr. 21, 1987	do	Caucus Room, Holiday Inn.[3]
Do	Apr. 22, 1987	do	Do.
Do	Apr. 23, 1987	do	Do.
Respiration	Apr. 26, 1987	7 p.m. to 10 p.m.	Vista Hotel.
Do	Apr. 27, 1987	8 a.m. to 5 p.m.	Do.
Endocrinology	Apr. 29, 1987	do	Helix Room, Town & Country Hotel.[4]
Do	Apr. 30, 1987	do	Do.
Mental Health and Behavioral Sciences.	Apr. 29, 1987	do	Presidential Room, Holiday Inn.
Do	Apr. 30, 1987	do	Do.
Do	May 1, 1987	do	Do.

Merit Review Board	Date	Time	Location
Hematology	May 1, 1987	8 a.m to 5 p.m.	Parliament Room, Town & Country Hotel.
Surgery	May 4, 1987	do	Caucus Room, Holiday Inn.
Infectious Diseases	May 4, 1987	6:30 p.m. to 10 p.m.	Parliament Room, Town & Country Hotel.
Do	May 5, 1987	8 a.m. to 5 p.m.	Do.
Basic Sciences	May 7, 1987	do	Presidential Room, Holiday Inn.
Do	May 8, 1987	do	Do.
Nephrology	May 11, 1987	do	Room 119, VA, Central Office.
Do	May 12, 1987	do	Do.

[1] Veterans Administration Central Office, 810 Vermont Avenue, NW. Washington, DC 20420.
[2] Vista International Hotel, 1400 M Street, NW, Washington, DC 20005.
[3] Holiday Inn, 1501 Rhode Island Avenue, NW., Washington, DC 20005.
[4] Town & Country Hotel, 500 Hotel Circle North, San Diego, CA 92108.

These meetings will be for the purpose of evaluating the scientific merit of research conducted in each specialty by Veterans Administration investigators working in Veterans Administration Medical Centers and clinics.

The meetings will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Board meetings will be closed to the public after approximately one-half hour from the start, for the review, discussion and evaluation of initial, and renewal research projects.

The closed portion of the meeting involves: discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, a well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, closing portions of these meetings is in accordance with 5 U.S.C., 552b(c)(6) and (9)(B). Because of the limited seating capacity of the rooms, those who plan to attend should contact Dr. Arlene E. Mitchell, Acting Chief, Program Review Division, Medical Research Service, Veterans Administration, Washington, DC, (202) 233–5065 at least five days prior to each meeting. Minutes of the meetings and rosters of the members of the Boards may be obtained from this source.

Dated: March 5, 1987.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 87–5646 Filed 3–16–87; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Native American Veterans; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that the 2nd meeting of the Advisory Committee on Native American Veterans will be held in Albuquerque, New Mexico on April 6 through 8, 1987, at the Albuquerque Sheraton, 800 Rio Grande Blvd., NW., Albuquerque, New Mexico 87104. The purpose of the meeting is to address issues and recommendations developed at the initial meeting of the Committee on December 10 through 12, 1986. The meetings on April 6 and 7 will convene in the Pueblo Room at 8:30 a.m., and will continue until 4:30 p.m. The meeting on April 8, 1987 will convene in the Potters Room at 8:30 a.m., and adjourn at 12:30 p.m.

All sessions will be open to the public up to the seating capacity of the room. To assure adequate accommodations, those who plan to attend should contact Mr. John Fulton, M.S.W., Committee Manager, Advisory Committee on Native American Veterans, at (202) 233–2614.

Dated: March 5, 1987.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 87–5644 Filed 3–16–87; 8:45 am]

BILLING CODE 8320–01–M

Veterans Administration Wage Committee; Meetings

The Veterans Administration, in accordance with Pub. L. 92–463, gives notice that meetings of the Veterans Administration Wage Committee will be held on:

Thursday, April 9, 1987, at 2:30 p.m.
Thursday, April 23, 1987, at 2:30 p.m.
Thursday, May 7, 1987, at 2:30 p.m.
Thursday, May 21, 1987, at 2:30 p.m.
Thursday, June 4, 1987, at 2:30 p.m.
Thursday, June 18, 1987, at 2:30 p.m.

The meetings will be held in Room 304, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Veterans Administration and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, and as cited in 5 U.S.C. 552b(c)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairman for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairman, Veterans Administration Wage Committee, Room 1175, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: March 5, 1987.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 87–5643 Filed 3–16–87; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Women Veterans; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a

meeting of the Advisory Committee on Women Veterans will be held in the Administrator's Conference Room at the Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC on March 26 through March 27, 1987. The purpose of the Advisory Committee on Women Veterans is to advise the Administrator regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach and other programs administered by the Veterans Administration; and the activities of the Veterans Administration designed to meet such needs. The Committee will make recommendations to the Administrator regarding such activities.

The sessions will convene at 8:30 a.m. March 26, 1987, and at 8:30 a.m. on March 27, 1987. These sessions will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Mrs. Barbara Brandau, Program Assistant, Medical Service, Veterans Administration Central Office (phone 202/233-2450) prior to March 20, 1987.

Dated: March 5, 1987.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 87-5645 Filed 3-16-87; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 51
Tuesday, March 17, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

March 12, 1987.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, March 19, 1987, which is scheduled to commence at 10:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

General—1—Title: In the Matter of Amendment of Subpart H, Part 1 of the Commission's Rules and Regulations concerning Ex Parte Communications and Presentations in Commission Proceedings. Summary: The Commission will consider whether to amend the ex parte rules and regulations.

Common Carrier—1—Title: In the Matter of Inquiry into the Policies to be Followed in the Authorization of Common Carrier Facilities to meet North Atlantic Telecommunications needs during the 1991–2000 period. (CC Docket No. 79–184). Summary: The FCC will consider whether to initiate a proceeding to develop policies and guidelines for the construction and use of cable and satellite transmission facilitites to meet demands for common carrier services on the North Atlantic route during the 1991–2000 period.

Common Carrier—2—Title: In the Matter of Policy for the Distribution of United States International Carrier Circuits Among Available Facilities during the Post-1988 period. Summary: The FCC will consider whether to institute a proceeding to develop a Post-1988 policy for the distribution of United States international common carrier circuits among available facilities.

Mass Media—1—Title: False Certification of Financial Qualifications by Applicants for Broadcast Station Construction Permits. Summary: The Commission will consider a Proposed Public Notice on False Certification of Financial Qualifications by Applicants for Broadcast Station Construction Permits.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Congressional and Public Affairs, telephone number (202) 632–5050.

Issued: March 12, 1987.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–5793 Filed 3–13–87; 2:17 pm]

BILLING CODE 6712-01-M

INTER-AMERICAN FOUNDATION BOARD

Meeting

TIME AND DATE:

March 23, 1987—6:00–9:00 p.m.
March 24, 1987—9:00 a.m.–12:00 noon

PLACE: 1515 Wilson Boulevard, Fifth Floor, Rosslyn, Virginia 22209.

STATUS: Open.

MATTERS TO BE CONSIDERED:

March 23, 1987

1. The Chairman's Report
2. The President's Report
3. Approval of the Minutes of the Meeting of September 22–23, 1986

March 24, 1987

4. Report of the Committees of the Board
5. Other Business

CONTACT PERSONS FOR MORE INFORMATION: Charles M. Berk, Secretary to the Board of Directors, (703) 841–3812.

Dated: March 10, 1987.

Charles M. Berk,

Sunshine Act Officer.

[FR Doc. 87–5772 Filed 3–13–87; 8:45 am]

BILLING CODE 7025-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 16, 23, 30, and April 6, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC

STATUS: Open and Closed

MATTERS TO BE CONSIDERED:

Week of March 16

Monday, March 16

2:00 p.m.
Briefing on Status of TVA (Public Meeting)

Thursday, March 19

4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Codification of Procedures for Resolving Conflicts Concerning Disclosure or Nondisclosure of Information (Tentative)

Friday, March 20

10:00 a.m
Discussion/Possible Vote on Restart of Palisades (Public Meeting)

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed-Ex. 2 & 6)

Week of March 23—Tentative

Thursday, March 26

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 30—Tentative

Thursday, April 2

2:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 6—Tentative

Monday, April 6

2:00 p.m.
Briefing on NRC Strategic Planning (Public Meeting)

Thursday, April 9

2:30 p.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Tentative)

4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634–1410.

Robert B. McOsker,

Office of the Secretary.

March 12, 1987.

[FR Doc. 87–5815 Filed 3–13–87; 3:35 p.m.]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 52, No. 51
Tuesday, March 17, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 55, 56, 59, and 70

Increase in Fees and Charges; Egg, Poultry, Rabbit Grading, etc.

Correction

In proposed rule document 87-4188 beginning on page 6162 in the issue of Monday, March 2, 1987, make the following corrections:

1. On page 6162, in the first column, in **ADDRESS**, in the second line, "DMM" should read "D.M.".

2. On page 6163, in the first column, in the last paragraph, in the 3rd and 10th lines, "*E*" should read "*E.*".

§ 55.550 [Corrected]

3. On the same page, in the third column, in § 55.550(a), the 13th line from the bottom, beginning with "Staphylococcus..." should be flush left.

§ 56.52 [Corrected]

4. On page 6164, in the second column, in § 56.52, at the end of paragraph (a)(4), and just prior to amendatory instruction 9., insert a row of five asterisks.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

[A-479-601]

Postponement of Final Antidumping Duty Determination; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From Yugoslavia

Correction

In notice document 87-4353 beginning on page 6366 in the issue of Tuesday, March 3, 1987, make the following correction:

On page 6366, in the third column, in the last line, the date should read "June 22, 1987".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/30D; FRL 3144-3]

Final Determination and Intent to Cancel and Deny Applications for Registrations of Pesticide Products Containing Pentachlorophenol (Including But Not Limited to Its Salts and Esters) for Non-Wood Uses

Correction

In notice document 87-1221 beginning on page 2282 in the issue of Wednesday, January 21, 1987, make the following corrections:

1. On page 2285, in Table 1, in the first line, after the first column heading "Use", the first heading over the last three columns "Penta MOS" should read "HxCDD", and the 3rd, 4th, and 5th column heads thereunder should read "Penta MOS", "15 ppm", and "2 ppm" respectively.

2. On the same page, in the same table, in the 11th line, "dicoxide" should read "dioxide".

3. On the same page, in the same table, in the 21st line, insert "3." before "Marine".

4. On the same page, in the first column at the bottom of the page, in the last paragraph, in the first line, "Commercial" was misspelled.

5. On the same page, in the second column at the bottom of the page, in the sixth line, after "length.", capitalize the "S" in "subcutaneous".

6. On page 2286, in the first column, in the fourth complete paragraph, in the second line, "incidence" was misspelled.

7. On the same page, in the same column, in the last paragraph, in the third line, "bioassay" was misspelled.

8. On the same page, in the second column, in the 11th line, remove "]" after "request,".

9. On the same page, in the same column, in the first complete paragraph, in the fifth line, the exponent "-10^{7}" should read "-7".

10. On the same page, in the same column, in table 2, under the "15 ppm" column, the first six figure lines should all read "10^{-1}—10^{-2}".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 77N-0240; DESI 12836]

Dipyridamole; Drugs for Human Use; Drug Efficacy Study Implementation; Amendment

Correction

In notice document 87-3734 appearing on page 5501 in the issue of Monday, February 23, 1987, make the following correction:

On page 5501, in the third column, the 21st line should read "Dated: February 17, 1987."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-020-07-4333-10; GP7-123]

Oregon; Off-Highway Vehicle Designation

Correction

In notice document 87-3593 beginning on page 5348 in the issue of Friday, February 20, 1987, make the following correction:

On page 5349, in the first column, in the sixth line, "play" should read "playa".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-940-07-4520-12; Group 845]

Filing of Plat Survey; California

Correction

In notice document 87-2964 appearing on page 4536 in the issue of Thursday, February 12, 1987, make the following correction:

On page 4536, in the third column, in the fourth line, "16" should read "34".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F-020174, F-35871, F-35872]

Public Land Withdrawals; Fort Greely Maneuver Area et al., Alaska

Correction

In notice document 87-3703 beginning on page 5506 in the issue of Monday, February 23, 1987, make the following corrections:

1. On page 5506, in the third column, the 44th line should read "Sec. 22, E½NE¼, NE¼SE¼;".

2. On page 5507, in the first column, the 21st line should read "Sec. 17, NE¼,N½NW¼, excepting".

3. On the same page, in the same column, the 51st line should read "Sec. 15, N½, N½SW¼, SW¼SW¼;".

4. On the same page, in the same column, in the last line, the first "NE¼" should read "NW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

Correction

In rule document 87-3957 beginning on page 5763 in the issue of Thursday, February 26, 1987, make the following correction:

On page 5764, in the third column, the last line preceding the "FR Doc" line should read *Acting Chairman, U.S. Parole Commission.*

BILLING CODE 1505-01-D

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Information on Imports During First 10 Months of 1986 and Invitation of Comments

Correction

In notice document 87-2485 beginning on page 3897 in the issue of Friday, February 6, 1987, make the following corrections:

1. On page 3897, in the second column, in the second complete paragraph, in the 16th line, "1974" should read "1984".

2. On page 3908, in List III, in the fifth column, in the tenth line from the bottom, the "Country total" should read "$3,772,302".

3. On page 3909, in List III, in the second column, the first entry should read "25284" and the second entry should read "25420".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 5h

[T.D. 8124]

Income Tax; Certain Elections Under the Tax Reform Act of 1986

Correction

In rule document 87-2219 beginning on page 3623 in the issue of Thursday, February 5, 1987, make the following corrections:

1. On page 3624, in the second column, in the authority for Part 5h, in the fifth line, "154(d)" should read "145(d)".

§ 5h.5 Time and manner of making certain elections under the Tax Reform Act of 1986.

2. On the same page, in the third column, the heading for § 5h.5 should read as set forth above.

3. In the same column, in § 5h.5(a)(1), in the tenth line, "certain" should read "the".

4. On the same page, in the table, in the third column, in the entry for Act section 204(e), in the fourth line, "11-3-86" should read "11-3-85".

5. On page 3626, in the table, in the third column, in the last line, insert ")" after "organizations", and in the fourth column, in the entry for Act section 1879(p)(1), in the second line, "paragraph (a)(2)(viii)" should read "paragraphs (a)(2)(vii)".

6. On page 3628, in the second column, in § 5h.5(a)(4)(i), in the 17th line, "1882(C)" should read "1882(c)".

7. On page 3629, in the third column, in § 5h.5(f)(1), in the ninth line above paragraph (f)(2), remove "§ 5h.5(f)(1)".

8. On page 3630,in § 5h.5(g), in the first column, in the second line, remove "§ 5h.5(g)".

9. In the same column, in § 5h.5(h)(3), in the third line, "1402(a)(1)" should read "1402(e)(1)", and in the ninth line of the same paragraph, between "year" and "beginning" insert "ending on or after October 22, 1986, or with respect to the individual's first taxable year".

10. In the same column, in § 5h.5(h)(4)(i), in the third line, "In" should read "If".

BILLING CODE 1505-01-D

federal register

Tuesday,
March 17, 1987

Part II

Copyright Royalty Tribunal

1984 Cable Royalty Distribution Proceedings; Notice of Final Determination

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. CRT 85-4-84CD]

1984 Cable Royalty Distribution Proceeding

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of final determination.

SUMMARY: The Copyright Royalty Tribunal announces the adoption of its final determination in the proceeding concerning the distribution to certain copyright owners of royalty fees paid by cable systems for secondary transmissions during 1984.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street N.W., Suite 450, Washington, D.C. 20036, (202) 653-5175.

SUPPLEMENTAL INFORMATION:

Authority

Section 111(d)(3) of the Copyright Act, as amended August 27, 1986, authorized the Copyright Royalty Tribunal to distribute annually royalty fees paid by cable systems to those among the following copyright owners who claim that their works were the subject of secondary transmissions by cable systems during the relevant semiannual period:

(A) Any such owner whose work was included in a secondary transmission made by a cable system of a nonnetwork television program in whole or in part beyond the local service area of the primary transmitter; and

(B) Any such owner whose work was included in a secondary transmission identified in a special statement of account deposited under paragraph (1)(A); and

(C) Any such owner whose work was included in nonnetwork programming consisting of aural signals carried by a cable system in whole or in part beyond the local service area of the primary transmitter of such programs.

This Proceeding

In this proceeding, the Tribunal takes up the distribution of the royalty fees deposited by cable operators for the calendar year 1984. In accordance with past procedure, the Tribunal resolved that the 1984 distribution proceeding would be conducted in two phases. In Phase I, the Tribunal would determine the allocation of cable royalties among various program categories of claimants. The Phase I categories were: Program Suppliers, Sports, Public Broadcasting Service, U.S. Commercial Television, Music, Devotional Programs, Canadian Programs, Noncommercial Radio and Commercial Radio. In Phase II, Tribunal would allocate cable royalties to individual claimants within a program category.

For this 1984 proceeding, there were no controversies in Phase I. All Phase I parties settled based upon the allocations made by the Tribunal in the 1983 cable distribution proceeding. In Phase II, there were three controversies.

Controversy one: The National Broadcasting Company (NBC) is the producer of the television series, "Little House on the Prairie." NBC contracted with Worldvision Enterprises, Inc. (Worldvision) to distribute off-network re-runs of "Little House on the Prairie" to television broadcast stations. The question presented was: Is NBC, the producer, or is Worldvision, the syndicator, entitled to the 1984 cable royalties for "Little House on the Prairie?" (The question of the value of "Little House on the Prairie" was stipulated as not in controversy.)

Controversy two: Warner Communications, Inc. (Warner) is a producer and distributor of music videos. Music videos are distributed to either program producers or broadcast stations to be used in music video shows, or individually. The questions presented were: Is Warner entitled to come directly to the Tribunal to advance its claims for the value of its music videos, or is Warner required to seek its share of any cable royalties from the producers or distributors of music video shows in actions on the underlying contract? Is the "Night Tracks-Chartbusters" music video show properly classified as part of the 1984 Program Suppliers Phase I category or as part of the 1984 Commercial Television Phase I category? (The question of the value of Warner's music videos was stipulated as not in controversy.)

Controversy three: Within the Program Suppliers category, three parties advanced claims which, when combined, exceeded 100% of the category. The Motion Picture Association of America, Inc. (MPAA) claimed 99.3%. Multimedia Entertainment, Inc. (Multimedia) claimed 1.2%. The National Association of Broadcasters (NAB) claimed 0.8%.

Background and Chronology

Seven hundred and fifty (750) individual or joint claims were filed with the Tribunal for the 1984 cable royalty fund. On January 30, 1986, the Tribunal published a notice directing claimants to inform the Tribunal by March 3, 1986 whether a controversy existed with regard to the distribution of the 1984 cable copyright royalty fees. 51 FR 3816.

The comments submitted by the claimants generally indicated a desire to wait for the issuance of the Tribunal's determination of the 1983 cable royalty distribution proceeding to ascertain whether a settlement among the parties could be reached. The Tribunal agreed with the claimants, and asked again on May 21, 1986 whether, in light of the Tribunal's 1983 cable distribution determination published April 15, 1986, a controversy existed in the 1984 cable royalty distribution. 51 FR 18646.

Based upon the comments the Tribunal received from its second notice, the Tribunal determined that: (1) There were no controversies as to the distribution of the 1984 basic and 3.75% fund, Phase I; (2) whether there was a controversy as to the 1984 syndex fund, Phase I, would await the outcome of the appeal of the 1983 cable distribution determination; and (3) There existed controversies in one more Phase II program categories. The declaration of the controversies was made effective June 19, 1986. In the same notice, the Tribunal ordered a partial distribution of the 1984 cable royalty fund for June 19, 1986. 51 FR 21587 (June 18, 1986).

On June 24, 1986, the Tribunal ordered those Phase II claimants who had not shown entitlement in previous cable distribution proceedings, and whose claims were unfamiliar to the Tribunal and other parties, to file by August 1, 1986 a brief statement describing the basis for their claims and the facts supporting them. *Order,* dated June 24, 1986.

Written direct cases were filed by the parties on September 29, 1986. In addition to the three controversies described above, one additional controversy was litigated. In the Music category, Asociation de Compositores y Editores de Musica Latinoamerica (ACEMLA) claimed 5%, and the American Society of Composers, Authors, and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc. jointly claimed 100%.

Presentation of the Phase II parties' direct cases began on October 21, 1986 and concluded on November 7, 1986 after eight (8) days of hearings. The Phase II written rebuttal cases were filed November 18, 1986. The hearing of the rebuttal cases commenced on December 2, 1986 and concluded on December 10, 1986 after five (5) days of hearings.

On December 22, 1986, the U.S. Court of Appeals for the Second Circuit upheld the Tribunal's decision in the 1983 cable distribution proceeding in all respects. *National Association of Broadcasters* v. *Copyright Royalty Tribunal,* Nos. 86-4042, 86-4056, 86-4066 (2d Cir. Dec. 22, 1986). Consequently, no controversy as

to the syndex portion of the 1984 fund, Phase I, was invoked by any party.

The record in the 1984 cable distribution proceeding was closed January 7, 1987.

On January 15, 1987, ACEMLA filed a letter with the Tribunal withdrawing its Phase II claim. The controversy in the Music category which was heard by the Tribunal was rendered moot by ACEMLA's withdrawal.

The parties filed Phase II Proposed Findings of Facts and Conclusions of Law on January 16, 1987. Reply Proposed Findings of Facts and Conclusions of Law were filed on January 27, 1987.

Controversy One: NBC and Worldvision

Findings of Fact

"Little House On The Prairie" ("Little House") is a television series based on several children's books by Laura Ingalls Wilder. Tr. 832. NBC produced 182 episodes of the series which aired in prime-time on the NBC television network from 1974 to 1983. Stipulation, dated November 5, 1986; Tr. 764. The production costs of each episode approached one million dollars, and were paid solely by NBC. Tr. 765. NBC filed for and received a certificate of copyright registration for each episode of "Little House." Stipulation, dated November 5, 1986.

On March 1, 1979, NBC and Worldvision entered into a written agreement for the domestic off-network television distribution of all NBC-produced episodes of "Little House" up to and including the 1980–1981 broadcast season. NBC Ex. 2. On December 1, 1982, NBC and Worldvision entered into another agreement which covered all "Little House" episodes produced for broadcast subsequent to the 1980–1981 broadcast season. NBC Ex. 3. In all material respects, except for the indentity of the episodes covered by each, the 1979 and the 1982 agreements are the same. Tr. 814, 1659–60.

The Contract Terms. The pertinent features of the two NBC-Worldvision contracts are as follows:

NBC transferred and granted to Worldvision "full and exclusive domestic distribution and profit participation rights . . . to the 'Little House on the Prairie' television series" for thirty-five (35) years from the date of first availability. NBC Ex. 2, pp. 1–3; NBC Ex. 3, pp. 1–4.

The rights granted to Worldvision extended "solely to exhibition over conventional free television on other than a national network prime-time basis." NBC Ex. 2, p. 3; NBC Ex. 3, p. 4.

Conversely, the contracts granted no rights to Worldvision, and placed no restriction on NBC "regarding any means of distribution of exhibition other than by conventional free television broadcasts." NBC Ex. 2, pp. 9–10; NBC Ex. 3, p. 12.

The negotiations were conducted in the context of an FCC regulation which states that no television network shall "sell, license, or distribute television programs to television station licensees within the United States for non-network television exhibition or otherwise engage in the business commonly known as 'syndication' within the United States; . . . or reserve any option or right to share in revenues or profits in connection with such domestic . . . sale, license, or distribution." 47 CFR 73.658(j). Consequently, the NBC-Worldvision contracts departed from the customary domestic syndication agreements in which the distributor sells the program product on behalf of the producer, collects the money, takes its distribution fee—a percentage of collections—and remits the balance to the producer. Tr. 929–30, 1038. The NBC-Worldvision agreements were an outright sale based upon a flat price for each episode. Worldvision Ex. 1, p. 3. The actual sale price was not placed into evidence by stipulation of the parties to protect the secrecy of the negotiations, but it was acknowledged that the price was in the millions of dollars. Tr. 981.

The contracts provided for additional payments to NBC in the event that Worldvision's gross collections achieved certain plateaus. Tr. 977–978. At each of five plateaus, $60 million, $70 million, $80 million, $90 million, and $100 million, Worldvision would pay to NBC $5 million. Tr. 979–980. Beyond $100 million in gross collections, Worldvision owed NBC no further payments. Tr. 981–982.

There was no clause in either agreement addressing the status of cable retransmissions under the contracts, or the proper disposition of the cable copyright royalties which the Copyright Royalty Tribunal distributes. NBC Exs. 2, 3.

The rights and obligations of the parties to the agreements are to be determined in accordance with the laws of the state of California. NBC Ex. 2, p. 23; NBC Ex. 3, p. 31.

Testimony as to the intent of the parties. The agreements were negotiated by David Freedman for NBC, and by Neil Delman for Worldvision. Tr. 821, 896–98, 927. The written agreements were drafted by NBC. Tr. 937, 1648. In the negotiations, there were no discussions of the Copywright Royalty Tribunal, or what should happen under the contracts to the royalties distributed by the Tribunal. Tr. 1021.

Susan Beckett, Senior Attorney in NBC's New York law department in 1979, testified that she was part of an Ad Hoc Committee formed by NBC to explore emerging markets and new technologies, and that in the course of the ad Hoc Committee activities, she was asked to review the draft 1979 NBC-Worldvision agreement to assure that NBC's rights to "Little House" were protected with respect to the developing videodisc, videocassette, pay and cable television markets. NBC Direct Testimony of Susan Beckett, pp. 1–2. Ms. Beckett conveyed NBC's concerns about protecting NBC's rights to Bernard Gold, an NBC attorney who was involved in drafting the substantive provisions of the 1979 agreement. *Id.*

Mr. Beckett stated that the reason the cable retransmission royalties were not specifically excluded when drafting the contracts was that "markets are ever changing, and if one were to attempt to draft a grant of rights provision that specifically stated everything that was being held back, one would probably run a big risk of leaving something out. What we did instead was simply make a very small, very specific grant of rights provision, and limit this very specifically to conventional free television." Tr. 780.

Mr. Delman, Chief Operating Officer of Worldvision, testified that it was his understanding when he was negotiating with Mr. Freedman, that Worldvision was purchasing from NBC all monies, from whatever source, including cable retransmission royalties, which Worldvision received as a consequence of licensing "Little House" to conventional free television. Tr. 895, 928, 1022.

Actions of the parties subsequent to the agreements. The series, "Little House," first became available for off-network distribution on September 15, 1981. Tr. 826; NBC Ex. 2, p.3.

Worldvision's activities under the contracts has been to license commerical television broadcast stations for the exhibition of "Little House." NBC does not allege that Worldvision has negotiated directly with any cable system. Tr. 776–777.

Subsequent to the agreements, Worldvision had not filed any certificate of copyright registration with the Copyright Office for any episode of "Little House." Tr. 1043.

Worldvision was the sole claimant before the Tribunal for cable royalties for "Little House" for calendar years 1981 and 1982. Worldvision merged its claim with the claim of the settled group

of program suppliers represented by MPAA, and derived its awards for 1981 and 1982 from the award made to MPAA. Worldvision Ex. 1, p. 3; Tr. 851, 1632.

For Calendar year 1983, both Worldvision and NBC filed claims for "Little House." Worldvision Ex. 1, p. 3; NBC Ex. 8. NBC did not pursue its claim other than filing, and it did not invoke a controversy against Worldvision. Again, in 1983, Worldvision received royalties for "Little House" through MPAA according to its pre-arranged settlement. Worldvision Ex. 1, P. 3.

For calendar year 1984, NBC has invoked a controversy against Worldvision, but has stipulated that the amount of royalties which Worldvision would receive through MPAA for "Little House" is acceptable to NBC should the Tribunal conclude the controversy in NBC's favor, and therefore, the question of the value of "Little House" is not in controversy. NBC Direct, Introduction, p–p. 3, 10

Worldvision is required to furnish NBC a statement of gross receipts in regard to licensing of "Little House" every six months. NBC Ex. 2, p. 15; NBC Ex. 3, p. 21. Worldvision has included the cable retransmission royalties it has received from the Tribunal in its gross receipts statement to NBC. Tr. 956–57.

Positions of the Parties

NBC

It is NBC's position that NBC is the creator and producer of "Little House," that it is the copyright owner of the entire series, and that it incurred the entire risk with respect to the sums put up for the production of the "Little House" episodes. NBC argues that the legislative history of Section 111 demonstrates that Congress intended to require cable operators to compensate the creators of the programs for the use of those programs. Consequently, in any distribution controversy, it is the creator of the programs who should be favored. NBC cites the Tribunal's 1983 cable determination in which the Tribunal allocated 95.5% of the syndicated exclusivity surcharge royalties to the program suppliers—as against the broadcasters—in support of its position.

NBC would concede that the creator of a program could sell or assign any one of the bundle of rights encompassed by the copyright to another entity, thereby establishing that entity as the proper recipient of cable copyright royalties, but in order for that result to occur, NBC argues that the transfer or assignment must be 1) specific, unambiguous, and clearly intended, and 2) it must be a transfer of the pertinent right. Otherwise, the right to collect cable copyright royalties is retained by the copyright owner.

NBC argues first, that the contracts granted Worldvision the right to distribute to television broadcast stations only, and therefore, NBC retained all other rights, including the right to sell to cable systems. NBC asserts that the compulsory license by which cable systems obtain the right to show "Little House" on distant broadcast signals is a government substitute for the right to sell to cable systems. NBC asserts further that even if one were to find the contract clause granting the distribution right ambiguous, that it is incumbent on the transferee to show the clear transfer, not upon the transferor to show the retention, so that any ambiguity must be resolved in favor of the copyright owner.

NBC argues, second, that the relevant exclusive right for cable royalty distribution is the performance right, and that no where in the contracts is there language showing a conveyance of a public performance right on cable television. NBC asserts that it gave Worldvision a distribution right, and that distribution rights and performance rights are separate and distinct.

Finally, NBC argues that to the extent any ambiguities exist in the contract, it has presented testimony which it believes demonstrate the intent of NBC to retain the right to cable copyright royalties.

Worldvision

It is Worldvision's position that its entitlement to the 1984 cable copyright royalties derives clearly from its contractual agreements and that the contracts are not ambiguous. Worldvision states that under the agreements, it has the exclusive right to distribute "Little House" to free, commercial television, and the right to retain 100% of the profits therefrom after payment of expenses and specific NBC fees. Worldvision argues that there can be no cable retransmission giving rise to compulsory license royalty payments without a primary transmission via a television broadcast station, and therefore cable retransmission royalties legitimately constitute monies derived from distribution to free, commecial television.

Worldvision argues, in addition, that NBC is prohibited by the FCC rules either from engaging directly in syndicating to television broadcast stations, or in participating in the profits from such syndication, so that NBC could not by itself engage in the conduct necessary to give rise to cable royalties, or collect them from some one else. The effect of the FCC syndication rule, Worldvision claims, is to divest NBC of any claim to cable retransmission royalties.

Worldvision believes that the legislative history of Section 111 supports the syndicator as against the producer. Worldvision notes that the general interest in compensating the creators of the program was further identified in the House Report as the ability of the copyright owner to exploit the work in the distant market. The harm to the ability to exploit the work relates directly to Worldvision's activities, not to NBC's: NBC has already received its compensation from Worldvision, and the risk for profit or loss relevant to off-network syndication transferred from NBC to Worldvision with the signing of the agreements.

Worldvision finally argues that should the agreements be considered ambiguous, various rules of contract construction operate in Worldvision's favor. First it is asserted, that, under California law, when, during negotiations, the precise point of contention is not discussed, parol evidence of the intent of the parties is not relevant or permissible. Second, Worldvision argues that California law requires that any ambiguity be resolved against the party who prepared the written documents in this case, NBC. Third, the conduct of NBC subsequent to the agreements, in which it failed to initiate any action to recoup the cable royalties for several years indicates; in Worldvision's view, the conclusion that NBC is now engaged in a belated after-the-fact effort to improve the terms of the contracts.

MPAA, Multimedia, and NAB

MPAA expressed no opinion regarding the NBC-Worldvision controversy. Multimedia and NAB supported NBC, for essentially the same reasons stated by NBC.

Conclusions of law

The 1984 cable copyright royalties for "Little House On The Prairie" should be distributed to Worldvision.

The question before the Tribunal is: as between the producer and the syndicator of a program, who should receive the cable copyright royalties? Our analysis of this is based on three general premises: (1) The legislative history of Section 111 of the Copyright Act demonstrates that Congress intended to redress the harm incurred by the syndicators of television programming due to distant signal importation by cable systems; (2) The Tribunal has a responsibility to

ascertain that the party claiming to be the copyright owner of a program, when challenged, is in fact, the actual copyright owner; but that (3) The Tribunal is not the proper forum for the resolution of contract disputes.

Intent of Section 111. Both NBC and Worldvision have cited pertinent sections of the legislative history of Section 111 of the Copyright Act to support different and opposing contentions regarding the intent of Congress. NBC believes that Congress intended to reward the creators of television programs as against all other parties; Worldvision believes Congress intended to reward the syndicators of programs as against all other parties.

"Little House" represents one example of the production, distribution and use of an intellectual property in the television market. "Little House" began as a series of books, which was made into a television series by NBC, distributed by Worldvision after its network run to television stations, and retransmitted by cable systems to the systems' subscribers. Thus the distribution chain of "Little House" can be summarized: Author—Network producer—Off-network distributor—television exhibitor—cable exhibitor.

It is our understanding of the legislative history that when Congress spoke of imposing upon cable systems an obligation to compensate the creators of television programming, it was speaking in terms of the owners of the programming (author-network producer-off-network distributor) versus the users of the programming (television exhibitor-cable exhibitor).[1] Conversely, we do not believe that Congress, by using the word "creator" was intending to indicate a preference among or between the owners of the programming.

Where we do see a preference indicated by Congress, is in passages in the legislative history where the particular harm being redressed is identified:

> The retransmission of distant non-network programing by cable systems causes damage to the copyright owner by distributing the program to an area beyond which it has been licensed. Such retransmission adversely affects the ability of the copyright owner to exploit the work in the distant market." H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. 89 (1976).

[1] For example, Congress stated, "[i] In general, the committee believes that cable systems are commercial enterprises whose basic retransmission operations are based on the carriage of copyrighted program material and that copyright royalties should be paid by cable operators to the creators of such programs. H.R. Rep. No. 94-1476, 94th Congress, 2d Sess., 89 (1976).

Those who were the syndicators of television programs were the ones most directly harmed by the distant signal importation by cable systems without compensation because they could not orderly control the marketing of their product.

The Tribunal has consistently understood this to be the essential reason for Section 111 and has, twice, citing legislative history, determined to award royalties to the suppliers of programs as against the television exhibitors of programs. *1978 Cable Royalty Distribution Proceeding,* 45 FR 63026 (1980); *1983 Cable Royalty Distribution Proceeding,* 51 FR 12792 (1986).

This current proceeding is the first proceeding where a controversy between the producer and the syndicator of a television product has been presented. Consequently, we state that the Tribunal identifies the exclusive syndicator of off-network programming, among all those parties in the chain of production and distribution, as the party to whom the Tribunal has in the past and will consistently in the future distribute Section 111 royalties.

We believe this ruling assures an orderly marketplace because the above-described intent of Section 111 has been the general industry understanding since the creation of the Tribunal. We also believe that equitably, as well, the royalties should go to Worldvision, because Worldvision reimbursed NBC entirely for their interest in off-network syndication and whatever harm that might result from the successful exploitation of "Little House" in the off-network syndication market due to cable distant signal importation became entirely Worldvision's to bear.

This ruling does not foreclose the syndicator from remitting the cable copyright royalties up or down the chain of production and distribution pursuant to private contractual arrangement. A syndicator is free to promise royalties to the producer of the program or to the television exhibitor of the program as the parties to the contract see fit.

Ascertainment that the party is the actual copyright owner. The authority of the Tribunal under Section 111 is to distribute cable copyright royalties to copyright owners whose works were subject to secondary transmissions by cable systems. 17 U.S.C. 111(d)(3). Accordingly, the Tribunal may not award royalties to persons who are not copyright owners, and the Court of Appeals has indicated that the Tribunal's task includes examination of good-faith challenges to copyright ownership. *National Association of Broadcasters* v. *Copyright Royalty Tribunal,* 772 F. 2d 922, 937 (D.C. Cir. 1985), cert. denied, 106 S. Ct. 1245 (1986).

NBC claims that it is the copyright owner of "Little House" and that the agreements it entered into with Worldvision did not convey to Worldvision the relevant copyright for the purpose of receiving cable copyright royalties.

Regarding NBC's challenge, we conclude the following: Worldvision is the exclusive domestic off-network distributor to television broadcast stations of the television series, "Little House" pursuant to the grant from NBC in the two NBC-Worldvision agreements. The cable retransmissions of "Little House" occurred directly from the actions of Worldvision in licensing television stations. Although NBC claims no performing right was conveyed, it of necessity must have been conveyed because that is what Worldvision licensed the television broadcast stations to do, i.e., to perform "Little House," and that was the basis for the multimillion dollar compensation to NBC. Although Worldvision has not registered any copyright in "Little House," registration is not a prerequisite to collect cable copyright royalties, and the failure to register is not evidence that a copyright was not conveyed. Consequently, we find Worldvision is the proper party to claim royalties for "Little House."

Tribunal is not the proper forum for contract disputes. Both parties have stipulated that Worldvision is the exclusive syndicator to television stations of "Little House" which gave rise to the cable retransmission royalties in controversy. Beyond assuring ourselves of this point, the Tribunal has chosen not to delve any further into the contractual arrangements between NBC and Worldvision.

As a matter of policy, the Tribunal does not consider that it is the proper forum for the resolution of contract disputes. The Tribunal's experience and expertise lies in distribution determinations and ratesetting. The Tribunal does not see its task as requiring it to analyze and construe private contracts, governed as they are by state law.

Consequently, we simply hold that the Tribunal has determined that Worldvision, as the syndicator of "Little House," is the proper distributee of the 1984 cable copyright royalties. We specifically decline to rule on questions of the meaning of contract terms or the intent of the parties. We leave to private litigation whether the proper construction of the two NBC-Worldvision agreements imposes any

obligation on Worldvision to remit royalties to NBC, or whether the actual terms used in the contracts fail to convey to Worldvision the pertinent copyright for cable royalty distribution. We also decline to reach Worldvision's contention that FCC rules prohibit NBC from collecting cable copyright royalties; our decision has been rendered on other grounds.

Controversy Two: Warner Communications, Inc.

Findings of Fact

The claimant. A joint claim for 1984 cable copyright royalties was fined by Warner Communications, Inc., Elektra/Asylum/Nonesuch Records, Atlantic Recording Corporation, Warner Bros. Records, Inc., and Geffen Records (collectively, Warner, or the Warner record companies.) Claim No. 346, filed July 25, 1985.

Atlantic Recording Corporation and Warner Bros. Records, Inc. are each wholly-owned subsidiaries of Warner Communications, Inc. Elektra/Asylum/Nonesuch Records is a separate division of Warner Communications, Inc. Geffen Records is a joint venture in which one of the co-venturers in Warner Bros. Records, Inc. Warner Direct Testimony of David Altschul, p. 3.

The principal business of the Warner record companies is the production and distribution of records. Since the early 1980's, Warner has become involved in the production and distribution of music videos for exhibition on television broadcast stations. *Id.*, p. 4. In addition to the above-named companies, Warner Bros. Records, Inc. has also produced and distributed music videos under the name of Sire Records. Atlantic Recording Corporation has done the same under the name Atco Records. *Id.*, p. 3.

The principal purpose of music videos has been to promote the recording artists and the sale of records. *Id.*, p. 8. According to the "CVC Video Reports," a trade publication reporting on the music video business, Warner videos accounted, on average, for approximately one-quarter of the top music videos aired during 1984 by the broadcast and cable services surveyed. *Id.*, p. 5.

Nature of music video production. In nearly all instances in the music industry, the contract between the recording artist and the record company authorizes the record company to arrange the production of music videos which involve that artist. All rights in the music video vest with the recording company. *Id.*, p. 6.

Unless it has in-house capability, the record company commissions independent production companies to produce the videos. *Id.* The relationship between the record company and the producer of a music video is one of commissioning a "work made for hire." The costs of the music video is borne by the record company, and the copyright ownership in the music video is retained by the record company. *Id.*, pp. 6–7. Warner Bros. Records has generally paid between $25,000 and $150,000 to produce each music video, with an average cost in the range of $60,000 to $75,000. *Id.*, p. 6.

Music videos have an average running time of three to five minutes. *Id.*, p. 5. Warner's claim before the Tribunal is that a music video is a short "audiovisual work" or "motion picture" as these terms are used in the Copyright Act, and that it owns the copyright in the non-music audiovisual portions of the music video. Warner does not claim any interest in the copyright to the musical composition contained in the music video. *Id.*, p. 5, p. 7.

Means of distribution. In 1984, Warner licensed its music videos to over 100 different producers of music video shows carried over broadcast stations and/or cable systems. *Id.*, p. 7.

In some instances, Warner granted licenses directly to the television stations, which produce music video shows, or use the videos individually as fillers between programs. *Id.*, p. 8; Tr. 131.

In other cases, the licenses were granted to independent productions companies. These companies produce music video shows, using Warner videos and videos from other record companies, which are then distributed to and broadcast over one or more television stations. *Id.*, p. 8; Tr. 196.

Warner does not produce or distribute its own music video shows. Tr. 196. Warner believes that the consumer is not interested in just seeing Warner videos, but want a variety of all the successful and popular videos available at the time. *Id.*

In 1984, Warner granted licenses for non-network broadcast use of the music videos to the producers/distributors and to the television stations without charge, in order to achieve its principal business purpose of promoting record sales. Warner Direct, Testimony of David Atlschul, p. 8. The licenses Warner granted to the producers/distributors and to the television stations were non-exclusive licenses, i.e., Warner retained the right to license the use of the same music video to anyone else in any market in chose. *Id.*, p. 9; Tr. 135. The means of distribution that Warner uses are standard practice in the industry. Tr. 136.

Seven specific music video shows. Warner identified seven specific music video shows to which it limits its 1984 cable royalty claim, and based upon which it seeks a ruling from the Tribunal on its entitlement to come directly before the Tribunal. Warner Ex. 3; Tr. 94. However, by agreement, the value of Warner's claims is not at issue in this proceeding. Warner/MPAA/NAB Stipulation, dated Dec. 5, 1986.

The common feature of these seven shows is that these shows consist almost exclusively of music videos, and are characterized in the industry as "wall-to-wall" music video, shows. Warner Direct, Testimony of David Altschul, p. 10. The other elements of these programs which are not music videos, but which are contributions of the program producers are: the introductory and closing graphics, the voice-overs to introduce the music videos, and the breaks to commercials. Tr. 139, 144–146. One exception to this description among the seven programs is "America Rock/Hit City" which has some interview sequences with the musical artists. Consequently, music videos constitute approximately 60 percent of the running time of "America Rock/Hit City." Tr. 140.

Individually, the pertinent features of the seven shows are as follows:

"Night Tracks" was produced by Lynch-Billar Productions solely for airing on WTBS, Atlanta, every Friday and Saturday night in 1984. Warner Ex. 3; Tr. 200. Warner dealt with and supplied Lynch-Billar Productions only. Warner did not deal with WTBS. Tr. 201. During approximately the first half of 1984, "Night Tracks" was broadcast six hours per night, from midnight to 6:00 a.m. Midway through the year, an additional hour was added from 11:00 p.m. until midnight. This segment of "Night Tracks" was referred to as "Chartbusters," and it aired the "top 10" music videos of the week. Warner Ex. 3. WTBS claims for "Night Tracks/Chartbusters" in the 1984 cable distribution proceeding. Tr. 414–417.

"Top 40 Videos" is produced by Hunt-Jaffe Productions. It is a weekly 30 minute show, which was syndicated to five television stations in 1984 by Columbia Pictures Television (CPT). "Top 40 Videos" is claimed by CPT in the 1984 cable royalty distribution proceeding. Warner Ex. 3; Tr. 484–5, 703.

"New York Hot Tracks" is a weekly 90 minute show produced by WABC-TV in New York, and syndicated by Golden West Television Productions (Golden West). Golden West claims "New York

Hot Tracks" in the 1984 cable royalty distribution proceeding. Warner Ex. 3; Letter from Golden West Television Productions, dated November 14, 1986.

"Great Record Album Collection," "Houghton & Wirth," and "Gavin & Lott" are weekly shows of varying duration produced by the Music Magazine Foundation and syndicated to more than 50 television broadcast stations. Warner Ex. 3. Neither the producer nor the syndicator has filed a claim for these programs in the 1984 cable royalty distribution proceeding. Tr. 478, 711.

"America Rocks/Hit City" is a weekly show of varying lengths produced by Monument Productions, Inc., and syndicated to approximately 25 television broadcast stations. Warner Ex. 3. Neither the producer nor the syndicator has filed a claim for these programs in the 1984 cable royalty distribution proceeding. Tr. 487, 711.

MPAA Practices. MPAA represents a settled group of 86 program supplies. After receiving its overall allocation from the Tribunal in each cable distribution proceeding, MPAA makes an internal distribution of cable royalties to its settled group of 86 program suppliers based upon its own distribution formula. MPAA Direct, Exs. 1, 2.

Pursuant to its function of making its own internal distributions, MPAA categorizes television programs as to whether MPAA believes, on the basis of the Tribunal precedent, that they are within the program suppliers category or some other category. If MPAA makes a determination that a program is properly within the program suppliers category, it will make an internal distribution of royalties based upon that program. MPAA Direct, Testimony of Marsha Kessler, pp. 2–8; Tr. 413–416.

Warner asserts that there are certain program suppliers within MPAA's group who distribute their products in ways similar to Warner's distribution of music videos, and who receive internal distributions from MPAA. Warner, therefore, asserts, these internal MPAA practices are a basis for recognizing Warner's entitlement to receive royalties. Warner Proposed Findings, paras. 29–30. These similar cases are as follows:

Short-length cartoons—Sometimes, short-length cartoons are supplied to local broadcasters from different syndications. The local broadcasters compile the various cartoons into a local show, such as "Funtime," broadcast over WTBS–TV. Tr. 428–429, 493–495. In such cases, MPAA categorizes such programs as syndicated programs and distributes a portion of the royalties it has received from the Tribunal directly to the copyright owners of the short-length cartoons. Tr. 403–404, 703. MPAA does not deny internal distributions to cartoon copyright owners on the basis that these shows were locally produced. *Id.*

"PM Magazine"—Group W Productions supplies the syndicated portions of "PM Magazine" to television stations in various markets, and in each market, the local station packages the syndicated elements together with local talent and local seqments. Tr. 450–455. MPAA categorizes "PM Magazine" as syndicated programs and makes internal distributions to Group W Productions based upon "PM Magazine." *Id.*

Locally hosted movie programs—sometimes, packages of movies within the same genre are compiled by local stations, and are locally hosted with segments produced by the television stations, such as "Elvira." MPAA categorizes "Elvira" as a syndicated program and internal distributions according to the ownership of the actual movies shown. Tr. 407, 518–519.

MPAA witness Marsha Kessler testified that MPAA classifies short-length cartoons which appear in station-produced shows as syndicated because cartoons are not distributed individually, but as a package of 100 or more cartoons, and that these packages are listed in the BIB book as a syndicated product available for purchase. Tr. 408, 421. In addition, national rating publications, ROSP for the Nielsen Company, and SPA for the Arbitron Company, list these packages and give audience viewing data. Tr. 421. Similarly, "PM Magazine" is listed in the BIB book as available for syndication and its viewing data is listed in ROSP and SPA. Tr. 423.

Certain music video shows are listed in the BIB book. Tr. 425. MPAA recognizes them as syndicated, and would make an internal distribution to the syndicator of that program, such as CPT or Golden West, and not to Warner. Tr. 700.

Classification of "Night Tracks/Chartbusters." In the 1983 cable royalty distribution proceeding, "Night Tracks/Chartbusters" was originally listed by the Program Suppliers/MPAA in Phase I as a syndicated program. Program Suppliers 1983 Ph. I Direct, Ex. 21. At the close of the 1983 Phase I proceeding, MPAA reclassified "Night Tracks/Chartbusters" as belonging in the Commercial Television category, and deleted the program from its Phase II program listing. MPAA 1983 Ph. II Ex. 13. In this proceeding, MPAA has again classified "Night Tracks/Chartbusters" as a locally-produced program within the Commercial Television category. Tr. 415.

Positions of the Parties

Warner

It is Warner's position that it is entitled to come directly before the Tribunal to advance its claim for cable copyright royalties.

Copyright Ownership. Warner argues, first, that against all other parties in the production and distribution of music videos, it is the relevant copyright owner to receive cable royalties. Vis-a-vis the recording artist and the music video production companies, Warner has contracted for the copyright in the music video. Vis-a-vis the producers of music video shows, Warner has extended only a nonexclusive license to use its music videos, which, Warner notes, according to Section 101 of the Copyright Act, does not constitute a transfer of copyright ownership. Therefore, Warner asserts, it is the only proper distributee of royalties attributable to the secondary transmission of its music videos.

Components of programs v. complete program. Responding to the position of other parties that music videos are merely components of a program and that the Tribunal, by precedent, does not consider directly program components, Warner argues that music videos are complete programs in and of themselves. Each music video, according to Warner, is a separate audiovisual work, requiring the same creative contributions as a full-length movie and entitled to the same copyright protection as a full-length movie.

Warner acknowledges that music videos are short, averaging about 3 to 5 minutes in length, but Warner believes the difference in the running time of audiovisual works has no significance for copyright purposes. Warner, therefore, considers its legal position the same as that of a locally hosted movie program in which the individual movies are not considered components of the entire program, but complete programs themselves.

Warner especially relies on MPAA's internal treatment of cartoons, whose running time are directly comparable to Warner's music videos. Warner notes that the suppliers of these cartoons get direct compensation from MPAA, and thus MPAA's own policies support Warner's position.

Other parties in the chain of distribution. Warner disagrees with the Phase II parties who argue that the Tribunal should distribute whatever cable royalties pertain to the syndicator

or local station producer of the music video shows, instead of to Warner, and that Warner's compensation, if any, should derive from the contractual agreements it enters into with the syndicator or local station producer.

Warner notes that there are two separate copyrights under consideration before the Tribunal: Warner's copyright in the music videos, and the syndicators/station producer's copyright in the music video show.

Warner states that each music video show consists overwhemingly of a series of separate music videos which are supplied by, and the copyright in which is owned by, Warner and a variety of other record companies. If the music video shows are copyrightable at all, Warner argues, they are copyrightable as compilation works only.

Warner believes that the Tribunal should directly consider the valuation of both the copyright owners of the music videos and the copyright owners of the music video shows. Warner believes that the Tribunal should not award the copyright owners of the music video shows alone for the entire value of the show, and leave Warner to its contract remedies, because, the Warner's view, the entire value of the wall-to-wall music video shows lie in the music videos themselves, and any allocation of royalties attributable to Warner's music videos to the producers of the shows would, therefore, be an expansion of the producers' copyright interest in the shows.

Warner also believes that in all other pertinent situations, such as locally-hosted movie programs, locally compiled cartoon shows, and "PM Magazine," the parties and the Tribunal recognize that the syndicated elements of the shows merit direct consideration.

Classification of "Night Tracks/ Chartbusters." Consequently, Warner argues that programs like, "Night Tracks/Chartbusters," which consist primarily of syndicated programs and only a minor amount a station-produced content should be classified by the Tribunal as a syndicated program.

MPAA, NAB and Multimedia

It is the position of MPAA, NAB and Multimedia that Warner should not be entitled to come directly before the Tribunal to advance its claim for cable copyright royalties. These three parties do not dispute Warner's copyright ownership or that Warner might ultimately deserve some share of the royalties which are attributable to music video shows. Their view is only that Warner should seek its compensation through its contractual arrangements with the syndicator and/or local station producer, rather than directly from the Tribunal.

Components of a program. The three parties argue that although music videos may be copyrightable works under the Copyright Act, they are only components of the television broadcast programs that are retransmitted by cable systems. They cite as the applicable precedent, the Tribunal's 1978 cable distribution decision to give no award to the copyright owners of cartoon characters on the ground that cartoon characters are mere components of a program.

All three parties argue that the Tribunal's policy against directly considering the claims of the owners of components of a program should continue to apply. Reversing the Tribunal's cartoon character precedent of many years' standing, it is feared, would throw open the doors to a multitude of new claimants who could potentially force the Tribunal into another layer of allocation decisions, possibly a "Phase III," which would be unwieldy and unsatisfactory in its results.

Additionally, NAB disagrees with Warner's contention that because Warner retains the copyright in its music videos that it must be considered directly by the Tribunal. NAB notes the same could be true for an author of a poem which is recited on a television program, and states that it believes that the policy to cut off claims at the program level is within the Tribunal's discretion, and leaving the owners of retransmitted program components to collect royalties from program owners is the most rational course.

Other parties in the chain of distribution. The three parties believe the Tribunal should make its distribution to the syndicator and/or the local station producer of the music video shows and should direct Warner to obtain whatever compensation it believes it should receive from the music video show copyright owners.

The parties disagree with Warner that wall-to-wall video shows, such as the seven programs Warner described in its direct case, are the only consideration before the Tribunal. MPAA and NAB allege that Warner put forward only the wall-to-wall video shows to convince the Tribunal that rewarding the compiler rather than the underlying copyright owner would be putting the cart before the horse. However, both MPAA and NAB argue that wall-to-wall video shows are only one end of the spectrum. Videos might constitute 80% of a program, 50% of a program, 10% of a program, etc. NAB fears that granting a music video owner entitlement to come directly before the Tribunal would have them claiming for segments of videos used in news or entertainment programs. MPAA cites the need in Tribunal procedures for bright line tests, and believes that making its distribution only to program owners is a policy that works well.

MPAA claims that its internal distribution procedures are not inconsistent with its proposed policy regarding Warner. With regard to cartoons, MPAA states that if a producer of cartoons licensed a syndicator of a cartoon show, it would internally distribute to the syndicator, leaving the producer to negotiate with the syndicator. In the case of cartoons directly supplied to local broadcast stations, MPAA believes that the cartoon producer should be compensated rather than the local station compiler of the cartoons for reasons it believes are distinguished from music videos. Cartoons are generally packaged in groups of 100 or more, and are listed in industry books as available for syndication. They receive national ratings as syndicated programs. MPAA believes this is evidence of a general industry understanding that cartoon packages are syndicated programs in and of themselves.

NAB's position on short-length cartoons is different from MPAA's. NAB believes that MPAA's internal distribution scheme with respect to locally compiled cartoons is an example of the marketplace making its own arrangements, and should be respected in light of the Tribunal's policy encouraging private settlements, but that if the owners of the cartoons were to make a claim directly to the Tribunal for a separate royalty award, they, too, should be denied.

Classification of "Night Tracks/ Chartbusters" MPAA believes that "Night Tracks/Chartbusters" should be properly classified in the Commercial Television category consistent with the Tribunal's definition of a commercial television program issued last year.

NAB believes that "Night Tracks/ Chartbusters" should be classified as a syndicated series within the Program Suppliers category for the 1984 proceeding. NAB notes that "Night Tracks/Chartbusters" was initially categorized by MPAA as a syndicated program in the 1983 Phase I proceeding and remained so when the Tribunal reached its 1983 Phase I percentage allocations. In the 1984 Phase I proceeding, all parties agreed to settle for the same awards they received in the 1983 Phase I proceeding, and NAB believes that equity demands that a

program be categorized consistently in Phase I and Phase II of any single proceeding. NAB does not take a position on the proper categorization of "Night Tracks/Chartbusters" for future Tribunal proceedings.

Multimedia believes that "Night Tracks/Chartbusters" should be classified as a syndicated series within the program Suppliers category for the same reasons as those stated by NAB.

Conclusions of Law

Warner is entitled to come directly before the Tribunal to advance its claim for cable copyright royalties

Our analysis of whether Warner is entitled to come directly before the Tribunal proceeds from the agreed-upon point that Warner is the copyright owner of music videos which have been retransmitted by cable systems. Therefore, the question is, are there any policy reasons within the Tribunal's discretion for denying Warner direct access to Tribunal proceedings?

In the 1978 cable royalty distribution proceeding, the owners of such cartoon characters as Bugs Bunny, Miss Piggy, Kermit the Frog, Big Bird, Superman, and Bozo the Clown claimed a right to cable copyright royalties by virtue of their being copyrighted components of programs. *1978 Cable Royalty Distribution Determination*, 45 FR 63026, 63031 (1980). The Tribunal stated:

> (W)e have concluded that our awarding cable royalties to the Character claimants would not be consistent with the general scheme adopted by Congress in section 111. We conclude that the Congress did not contemplate this Tribunal awarding royalty fees to the copyright owners of individual components of programs. As was noted during the oral argument of this issue, approval of this claim might well require the Tribunal to award fees to authors of screen plays and novels that were adapted into programs. We are satisfied that Congress did not intend such a result. *Id.*, at 63033.

We continue to hold to our ruling rendered in the 1978 proceeding, but we have been persuaded by Warner that music videos, unlike cartoon characters, are complete program units in and of themselves. They can be considered individual programs, just as individual cartoons are which are compiled by local stations, and just as feature-length movies are which are compiled into locally-hosted television programs.

The next question for us to determine is whether some other party in the distribution chain is the more proper distributee of whatever cable royalties are attributable to music videos. Here, there are two features to the music video controversy which are distinct from the NBC-Worldvision controversy. One, Warner has retained the full copyright in its music videos, giving only a nonexclusive license to those who distribute and use it, whereas NBC assigned an exclusive distribution right to Worldvision. Second, the NBC-Worldvision controversy has as its subject matter one copyrighted property, "Little House," whereas in the music video controversy, there are two copyrighted properties—Warner's music videos, and the syndicator's or local station's music video shows.

Warner argues that solely because it has retained it copyright, the Tribunal must consider it directly, and may not distribute royalties attributable to its music video to any other party. We do not agree with Warner on that point. Rather, we side more with NAB which believes that the Tribunal has discretion to order its proceedings along rational lines so long as all those involved have an opportunity in the marketplace to adjust their interests accordingly. To agree with Warner on this point would ultimately require the Tribunal to consider every copyrightable interest, such as poems and cartoon characters, leading to a proliferation of claims that would be unmanageable and beyond our resources.

But the fact that Warner has retained its copyright does give Warner a more persuasive argument that it should be considered directly, and we now look to whether, on balance, the Tribunal should consider both the copyright owners of music videos and music video shows, or only the owners of music video shows.

The seven music video shows which Warner has put into evidence are illustrative of three different situations. In the case of "Night Tracks/Chartbusters," the music videos are supplied by Warner directly to the production company commissioned by the local broadcast station. In analogous situations, such as cartoons and "PM Magazine" and locally-hosted movie shows, MPAA, internally, has considered these as syndicated programs entitled to direct compensation. Although to this point, the Tribunal has never been called upon to consider the validity of this categorization, we agree that MPAA's practice is appropriate.[3] We do not agree that MPAA's attempted distinctions between cartoons and music videos are valid. Therefore, where Warner supplies a local television station directly, it seems appropriate to consider directly both claims, the syndicators in the music video, and the local station's in the music video show.

In the case of "Top 40 Videos" and "New York Hot Tracks," Warner supplied its videos to a program producer who in turn contracted with a syndicator to distribute music video show. The syndicators, Columbia Pictures Television, and Golden West Television Productions have filed claims for the music video shows. However, in the case of "Great Record Album Collection," "Houghton & Wirth," "Garvin & Lott," and "America Rocks/Hit City," the distribution from Warner is the same, but the syndicator has not filed a claim for the music video shows. These last four instances illustrate that to deny Warner the right to come directly before the Tribunal would be to deny Warner's claim for the use of its music videos in these four shows entirely. We believe that as reasonable as it may be for the Tribunal to establish rational points in the distribution chain where it will consider and valuate works, the recommended policy of the parties would work unfairly toward Warner who would have to rely upon another party to file timely, or othewise lose its claim.

We recognize the force of the arguments of MPAA, NAB and Multimedia who fear a multitude of new claimants and more and more difficult allocation decisions. We emphasize that our holding is that where a music video is shown in its entirety, i.e., that is a complete program, and the copyright is retained entirely by the music video producer, the owner's claim is considered part of the Program Suppliers category, and may come directly to the Tribunal. If there are any controversies between the music video owner and the copyright owner of the music video shows, those controversies will be addressed in Phase II. Consequently, a segment of a music video, such as those seen on news and entertainment programs, comes under our ruling on components of programming, and would not be a part of the claim of any music video copyright owner.

In addition, the example of a poem which NAB raises would not be considered directly by the Tribunal because it is not a program, i.e., it requires additional creative contributions, such as a performer, and is not a complete unit in and of itself.

[3] See, also, *1983 Cable Royalty Distribution Proceeding*, 51 FR 12792, at 12815, where NAB asserted only an interest in the "wrap around" portions of the "Elvira" series, not in the movies contained therein.

We emphasize that we have been careful not to state whether the copyright ownership in the non-musical audiovisual portions of the music video has a quantifiable value or is de minimis. That question was not litigated in this proceeding, and we do not reach it here.

"Night Tracks/Chartbusters" is properly classified as a syndicated program with the Program Suppliers category

Shortly after the Tribunal published its 1983 cable royalty distribution determination, the Program Suppliers moved the Tribunal to issue declaratory rulings regarding Phase I program categorizations. Pursuant to their request and comments received from the Joint Sports Claimants, NAB and Multimedia, the Tribunal issued an advisory opinion on May 16, 1986. The opinion stated, among other things, that: (1) syndicated series and specials within the Program Suppliers category are "programs licensed to/produced by and broadcast by two or more broadcast stations during the calendar year in question," and (2) local programs within the Commercial Television category are "programs licensed to/produced by and broadcast by a single broadcast station during the calendar year in question."

In response to a request by the Phase I parties to facilitate a settlement agreement for the 1984 Phase I proceeding, the Tribunal modified its advisory opinion to provide that, "for purposes of the 1984 Proceeding, programs syndicated to and broadcast by only one U.S. commercial television station during 1984, which were not produced by or for that station, will be treated as part of the 'syndicated program' allocation, not the 'local program allocation.' " *Notice Commencing 1984 Cable Distribution Proceeding*, 51 FR 21587 (June 18, 1986).

The purpose of this modification was to allow for those instances where the syndicator of a television program was successful in syndicating his or her program to only one station in the U.S. We agreed with the parties that the modification should apply to the 1984 distribution proceeding, and we now state that the modification is adopted for subsequent proceedings as well.

It appears from a review of the record developed during the hearing of the music video controversy, that an addition to the program category definitions is warranted. We have seen that there are a number of programs, although produced locally by the commercial television station, are comprised "wall-to-wall" of syndicated elements, such that it has been MPAA's practice to consider them syndicated programs and to make internal distributions accordingly. We agree that MPAA's practice is appropriate, and we therefore believe that "Night Tracks/Chartbusters" is properly classified as a syndicated program within the Program Suppliers category.

The modified definitions of syndicated series and of local programs are as follows. Syndicated series and specials within the Program Suppliers category are 1) programs licensed to and broadcast by at least one commercial television station during the calendar year in question; 2) programs produced by or for a broadcast station and which is broadcast by two or more broadcast stations during the calendar year in question; 3) programs produced by or for a broadcast station which are comprised predominantly of syndicated elements, such as music video shows, cartoon shows, "PM Magazine," and locally-hosted movie shows. Local programs within the Commercial Television category are programs produced by or for one commecial television station, broadcast by that one station only in the calendar year in question and not coming within the exceptions described in (3) of the Program Suppliers definition.

Controversy Three: MPAA, Multimedia and NAB

Findings of Fact

The claimants. MPAA is a trade association which represents 86 producers and/or syndicators of syndicated movies, television series and specials. MPAA Ex. 2. Collectively, the 86 claimants seek the cable royalties attributable to 5,796 different syndicated series, movies and specials which were retransmitted by cable systems in 1984. MPAA Ex. 4; Tr. 665.

Multimedia is the producer and syndicator of the following programs: "Donahue"—260 hours of news/interview programs, including 210 original programs, and 50 repeats in 1984; "Sally Jessy Raphael"—175 half-hours of interview/talk programs; "Pop! Goes the Country"—26 half-hour country music programs; "Music City U.S.A."—26 half-hour country music programs; "Austin City Limits"—10 half-hour country music programs; "Young People Specials"—10 half-hour children's features (five original and five repeats); "Music and Entertainment Specials"—25 prime-time country music specials in 1984 (ten original and fifteen repeats). Multimedia/owned television broadcast stations also produced and distributed a weekly half-hour information program—"Georgia Farm Monitor," four coaches/interview shows, and a half-hour Christmas special. Multimedia Direct, Testimony of Richard Thrall, pp. 3–4; Tr. 257–261, 237.

NAB is a trade association which represents 59 television broadcast stations. Collectively, the 59 stations seek the cable royalties attributable to 121 programs which the stations produced and which were syndicated to and broadcast on other stations in 1984. NAB Ex. II–2; Tr. 320–322; Tr. 337.

The Nielsen Study. As a part of its case for several distribution proceedings, MPAA has commissioned a special Nielsen study to prove its entitlement. 47 FR 9880; 48 FR 9554; 51 FR 12794. The study measures the number of hours of distant signal programming which are viewed by cable households. *Id.*

For this proceeding, MPAA selected to be included in the Nielsen study all U.S. commercial and noncommercial television broadcast stations reaching a minimum average of 100,000 Form 3 cable television households per six month period, or 200,000 for the first and second semiannual periods of 1984 combined. MPAA Direct, Testimony of Allen Cooper, p. 2. A total of 123 stations met MPAA's criteria: 63 network-affiliated stations, 40 independent stations (including 2 foreign language stations), and 20 noncommercial stations. MPAA excluded from its Phase II direct case the results derived from the 20 noncommercial stations because they were not considered relevant to an analysis of the Program Suppliers category. *Id.* The Nielsen study was comprised of six cycle data, that is, data collected at six different times of the year, January, February, May, July, October and November. MPAA Ex. 1, Memorandum, p. 2.

In the 1983 cable distribution proceeding, the Tribunal criticized MPAA's decision not to include in its Nielsen study certain types of programs such as parades, political programs, minor sports programs, programs on speciality stations, and programs syndicated on commonly-owned stations. 51 FR 12817. In this proceeding, MPAA designed its study to include the above-described categories of programs. MPAA Direct, Testimony of Marsha Kessler, p. 3.

The household viewing hours attributable to the programs of each of the three Program Supplier claimants were:

MPAA	2,381,600,000 (approx.).	99.329%
NAB	9,714,260	0.405

Multimedia	6,376,193	0.266

MPAA Direct, Testimony of Allen Cooper, p. 3, revised; MPAA Exs. R–1, R–11.

The comparable Nielsen statistics for 1983 were:

MPAA	2,217,169,720	99.197%
NAB	9,954,010	0.445
Multimedia	7,998,202	0.358

51 FR 12816.

Among Multimedia-owned shows, "Donahue" improved from 5,037,016 household viewing hours in 1983 to 5,397,397 household viewing hours in 1984, or approximately 7.2%. MPAA Ex. R–1. The remaining Multimedia-owned shows, inclusive of the newly-offered "Sally Jessy Raphael," however, declined from 2,961,186 household viewing hours to 988,424 household viewing hours, or 66.6% *Id.*

Challenges to ownership. MPAA and NAB disputed the ownership of three programs, "The Dance Show," "Fight Back with David Horowitz," and "Miller's Court." NAB Ex. II–2; MPAA Rebuttal, Testimony of Allen Cooper, p. 14. The stations producing these programs stated in the questionnaires which they returned to NAB that they had not transferred their copyright interests and were thus the copyright owners of the programs. NAB Ex. II–1. MPAA, on the other hand, asserted that it represented the syndicators of those programs. TR. 583–589. NAB stipulated that MPAA represents the syndicators of the three programs. NAB Reply Findings, p. 7, fn. 16. The total viewing hours of these shows in the Nielsen study were 159,507. MPA Ex. R–11.

Multimedia asserted that 20 titles which MPAA claims to represent are actually in the public domain. Multimedia Rebuttal, Testimony of Richard Thrall, pp. 5–7. Those twenty titles are: "Popeye," "Lone Ranger," "Perils of Pauline," "My Man Godfrey," "My Dear Secretary," "Made for Each Other," "Terror By Night," "The Strange Love of Martha Ivers," "Laurel & Hardy," "The Stranger," "The Thirty-Nine Steps," "Tarzan and the Green Goddess," "Tarzan the Fearless," "Tarzan's New Adventure," "The Ape," "Angel and the Badman," "The Snows of Kilimanjaro," "The Fallen Idol," "Meet John Doe," and "His Girl Friday." Multimedia Rebuttal Ex. 7.

Of the 20 titles, MPAA had previously disclaimed one of them, "Meet John Doe," and had deleted the household viewing hours from its calculations prior to Multimedia's challenge. MPAA Ex. 4, addition.

Multimedia's challenge to the ownership of "Popeye," purported to show that copyrights to 12 episodes of "Popeye" had not been renewed. Multimedia Rebuttal, Testimony of Richard Thrall, p. 6; Multimedia Rebuttal, Testimony of Richard Thrall, p. 6; Multimedia Rebuttal Ex. 5. There are 674 separate "Popeye" cartoons available for syndication. MPAA Ex. 31 RX. Multimedia could not state whether any of the 12 cartoons which it challenges were broadcast in 1984 or whether they accounted for any viewing hours. Tr. 1519.

Multimedia restated its challenge to the ownership of "Lone Ranger," based upon the 1983 record. Multimedia Rebuttal, Testimony of Richard Thrall, p. 5. In the 1983 proceeding, the Tribunal found that there were 14 episodes of the "Lone Ranger" for which no renewal registration could be found, but that there were 182 half-hour "Lone Ranger" episodes in the MPAA claim. 51 FR 12816.

Regarding "The Thirty Nine Steps," the tribunal found in the 1983 proceeding, that is was properly represented by Janus Films, Inc. based upon a license from the copyright owner of the underlying work. 51 FR 12816. Multimedia, in this proceeding, requests reconsideration of the Tribunal's findings. Multimedia Proposed Findings, pp. 25–26.

The remaining 16 titles which Multimedia challenges account for 3,314,760 household viewing hours. Multimedia Rebuttal Ex. 7.

Criticisms of the Nielsen study. Multimedia challenged the validity of the Nielsen study in three respects. Multimedia Rebuttal, Testimony of Richard Thrall, pp. 1–5. The first criticism was that the Nielsen study's emphasis on six sweep periods works to deny any entitlement to several of Multimedia's specials. *Id.*, p. 2. The examples cited were: although the "18th Annual Music City News Award" aired on 20 Nielsen-measured stations, only one broadcast occurred during the sweep periods; the "Hank Williams Special" and the repeat of "Volunteer Jam" aired on 19 and 20 Nielsen sample stations respectively, but only eight telecasts in total fell within the six sweep periods; broadcasts of "Stubby Pringle's Christmas" and the repeat of "New Faces" were carried by 38 sample stations combined, but not one broadcast was measured by Nielsen because they fell outside of the sweep periods. *Id.*, pp. 2–3. However, Multimedia did not provide in its direct case a complete list of which stations carried its programs and the dates the programs were aired. Tr. 1446–1447.

Multimedia's second criticism related to the cut-off point MPAA chose determined which stations would be in the Nielsen sample. MPAA's decision to raise the cut-off point from 95,000 cable households per semiannual period in 1983 to 100,000 cable households per semiannual period in 1984 resulted in the dropping of WBBM–TV, Chicago, Illinois from the Neilsen study. Multimedia notes that WBBM–TV is the flagship station of "Donahue" and the only station in the United States to carry "Donahue" live in 1984. Multimedia Rebuttal, Testimony of Richard Thrall, pp. 3–4.

On cross examination, MPAA introduced an exhibit which demonstrated that although four stations carrying "Donahue" were dropped from the Nielsen study in 1984 (WBBM–TV, Chicago, Illinois, WPLG, Miami, Florida, KSNT, Topeka, Kansas, and WCMH, Columbus, Ohio), three new stations carrying "Donahue") were added to the 1984 study (KSDK, St. Louis, Missouri, WBRE, Wilkes Barre/Scranton, Pennsylvania, and WDIV, Detroit, Michigan), and that the three new stations exceeded the four dropped stations in reaching distant cable subscribers by 120,110 households. MPAA Ex. 27RX. Multimedia witness Richard Thrall conceded the accuracy of MPAA's exhibit. Tr. 1487–1488.

Multimedia's third criticism was that the Nielsen viewing data did not comport with the results of similar data derived from the Nielsen ROSPs. Multimedia Rebuttal, Testimony of Richard Thrall, p. 4. According to Multimedia, the ROSP figures for viewing outside the designated market area (DMA) of a station should, in a typical case, exceed the Nielsen study figures because the non-DMA figures include some local viewing. Tr. 1457. However, for the twelve television series it analyzed, the Nielsen viewing data exceeded the ROSP viewing data, ranging from 3% in the case of "The Beverly Hillbillies" to 618% in the case of "Perry Mason." Multimedia Rebuttal Ex. 2, p. 5. Multimedia asserts that this indicates that the Nielsen viewing data are distorted. Multimedia Rebuttal, Testimony of Richard Thrall, pp. 4–5.

Although Multimedia asserts that many non-DMA counties are local, the opposite is true for WTBS. MPAA Ex. 30RX. All non-DMA counties for WTBS are distant, and additionally, nearly 30 counties inside the DMA are distant rather than local. *Id.*

Multimedia's Rebuttal Exhibit 2 does not consider other factors, such as the frequency a program was telecast in 1984, or the number of stations carrying the program. Tr. 1509–1511. MPAA introduced an exhibit analyzing 9 other programs. The exhibit showed the Nielsen data for these shows at levels 40 to 65% of the non-DMA viewing. MPAA Ex. 29RX.

NAB criticized the data MPAA had compiled for the NAB-represented claimants. NAB produced an exhibit based upon MPAA's Nielsen printouts purporting to show an additional 124,124 household viewing hours which should have been credited to NAB. NAB Ex. II–8X. MPAA conceded the validity of NAB's findings. Tr. 1338–1348.

Multimedia's claim. Multimedia asserts that its award should be increased from 1.0% in 1983 to 1.2% in 1984. Multimedia Direct, Testimony of Richard Thrall, p. 11. To support its request for an increased award, Multimedia notes that it syndicated 26 music and entertainment specials in 1984, seven more than in 1983. *Id.*, p. 4; Tr. 247. Multimedia also seeks credit for the introduction of a new daytime syndicated talk/interview program, "Sally Jessy Raphael." *Id.* 175 daily syndicated episodes of "Sally Jessy Raphael" were produced, and by the end of 1984, it was carried on 25 broadcast stations. Tr. 246.

Multimedia also asserts that its other programs maintained their marketplace value in 1984. Multimedia Direct, Testimony of Richard Thrall, pp. 5–8. "Donahue's" broadcast ratings remained relatively constant from 1983 to 1984. Multimedia Ex. 3. Broadcast ratings for "Music City USA," "Pop! Goes the Country," "Austin City Limits," and "Young People Specials" remained close between 1983 and 1984. Multimedia Ex. 6; Tr. 243. The time for all Multimedia programs on all broadcast stations during 1984 was 1237 hours per week. This compares to 1241 hours per week during 1983. Multimedia Ex. 18; Tr. 253.

Multimedia submitted exhibits listing which of its programs appeared on superstations, and which of its programs appeared on any broadcast stations for which at least one cable system paid at the 3.75% rate to carry in 1983. Multimedia Exs. 15, 5.

NAB's claim. NAB requested the same allocation for 1984 as it received in 1983, 0.8% NAB Proposed Findings, par. 5. In support of its claim, NAB presented two exhibits. The first exhibit was a copy of a questionnaire on programs syndicated in 1984 which the NAB-represented broadcast stations filled out at NAB's request. NAB Ex. II–1. The second exhibit was a listing of the syndicated programs which the broadcast stations claim. NAB Ex. II–2. The listing was based entirely upon the response to NAB's questionnaire. Tr. 319. Ex. II–2 listed the titles of the syndicated programs, the station which originated the program, and the stations which carried the program. Tr. 329. NAB underlined which carrying stations were imported as a distant signal by Form 3 cable systems in 1983. Tr. 330. Carrying stations which were not underlined may have been imported by Form 1 or Form 2 stations, but NAB could not state whether this was so. *Id.* There were six programs for which no carrying stations were underlined. Tr. 355. NAB presented no evidence as to the marketplace value of its program aside from its list of programs and which broadcast stations carried them. NAB Direct.

MPAA challenged the accuracy of NAB's Exhibit II–2. MPAA Rebuttal, Testimony of Allen Cooper, pp. 9–11. MPAA analyzed four programs produced by WPIX, New York, New York, which accounted for approximately 9,000,000 of NAB's Nielsen household viewing hours: "INN Midday News," "INN Evening News," "Wall Street Journal Report," and "From the Editors Desk." MPAA compared NAB's Ex. II–2's listing of the stations which carried these programs to Nielsen's "Report of Syndicated Programs" (ROSP) listing for the four-week February, May, July, and November, 1984 periods, and found sizable discrepancies. The percentage of NAB Ex. II–2 broadcast stations purporting to carry the WPIX programs which did not show up in the ROSP were as follows: "INN Midday News,"—41.8%, "INN Evening News,"—29.3%, "From the Editors Desk,"—40.3%, "Wall Street Journal Report,"—36.%. *Id.*, p.10.

MPAA witness Allen Cooper conceded that there could be valid reasons for the discrepancies, such as stations with audience levels below a certain minimum are not listed in the ROSP. *Id.*, p. 11. NAB introduced evidence from the syndicated program Analysis (SPA), a report published by Arbitron, and certain other evidence correcting MPAA's analysis, which modified the discrepancies downward. The percentage of "no" listings after NAB modifications became, "INN Midday News,"—21.0%, "INN Evening News,"—15.0%, "From the Editor's Desk,"—13.5%, "Wall Street Journal Report,"—14.6%. NAB Exs. II–4X, II–5X, II–6X, II–7X.

MPAA also raised the issue of programs broadcast only on commonly-owned stations. MPAA found 39 programs that were listed in NAB Exhibit II–2 which were broadcast only by commonly-owned stations which it believed should be treated differently by the Tribunal. MPAA Ex. 14R; Tr. 1163. MPAA witness Allen Cooper testified that the "harm" criterion which the Tribunal uses to evaluate programs is not a factor in distribution by an originating station to a commonly-owned station, because no effort was made to sell the program to anyone, so no sales were lost as the result of cable retransmissions. Tr. 1163. Mr. Cooper also testified that if a program only gets aired on a commonly-owned station, that is a judgment regarding its marketplace value, since if the program had more marketplace value, it would have been offered and bought in the syndication market. *Id.*

Conclusions of Law

MPAA, Multimedia, and NAB have shown entitlement to 98.475%, 0.825% and 0.7% of the Program Suppliers Phase I allocation, respectively.

In each of the previous proceedings in which MPAA, Multimedia and NAB have litigated a Phase II controversy in the Program Suppliers category, the Tribunal has used the Nielsen data provided by MPAA as its starting off point, but not its sole basis, for making its allocation among MPAA, Multimedia, and NAB. In this year's proceeding, the Nielsen breakdown among the three claimants was:

MPAA	2,381,600,000 (approx.).	99.329%
NAB	9,714,260	0.405
Multimedia	6,376,193	0.266

The programs proffered by NAB as belonging within its claim were disputed by MPAA, "The Dance Show," "Fight Back with David Horowitz," and "Millers Court." Both parties stipulated that NAB represented the producers of the shows and MPAA represented the syndicators. Following our ruling in the NBC-Worldivision controversy where we determined that as between the producer and the syndicator the Tribunal would award the syndicator, we find that these three disputed programs belong to MPAA's claim. However, the loss to NAB of the 159,507 household viewing hours represented by these three programs is almost entirely offset by the additional 124,124 household viewing hours which MPAA concedes should have been credited to NAB when MPAA did its analysis. Therefore, the Nielsen "starting off point" for the three claimants after these

adjustments are made is MPAA—99.33%, NAB 0.404%, Multimedia, 0.266%.

Multimedia challenged 20 titles within MPAA's claim as actually being in the public domain. The purpose of Multimedia's challenge was two-fold—one, to indicate to the Tribunal that these allegedly public domain properties were only the "tip of the iceberg" of many more public domain works in MPAA's claim so that MPAA should be required to put forward evidence of its members' copyright ownership of all its works, and two, to alter the relative strengths of the three claimants in the Nielsen data.

Regarding Multimedia's challenge to the two most significant programs (going by Nielsen viewing data alone), "Popeye," and "Lone Ranger," we do not credit that Multimedia has raised enough doubts sufficient to shift the burden to MPAA to prove its ownership of these programs. Only a few episodes of both programs were shown to have had their copyright registration lapse. The great bulk of the episodes were unchallenged. Multimedia did not show that even these few episodes were aired in 1984 or comprise any of MPAA's claim.

MPAA by it own procedures, disclaimed in advance of Multimedia's challenge, one title, "Meet John Doe," and therefore its viewing hours were not included in MPAA's direct case. In the case of "The Thirty Nine Steps," we decline to reconsider our ruling we made in the last proceeding; it was subject to full argument from all parties then and in this proceeding, Multimedia has offered nothing new.

Looking at the remaining 16 titles which account for 3,314,760 household viewing hours, the Tribunal performed an analysis, assuming, for the sake of the analysis only, that those works were in the public domain. Those viewing hours were subtracted from MPAA's total viewing hours, and the relative strengths of the three claimants were recalculated. Even without those viewing hours, the percentage share of MPAA, NAB, and Multimedia remain the same down to the third decimal place—99.330%, 0.404% and 0.266%, respectively. The Tribunal chose, therefore, not to engage in any analysis of the 16 challenged titles. We can only repeat what we stated in the last proceeding, that Multimedia's challenges to MPAA are clearly de minimis, and the possibility that there exists a sizable number of public domain works in MPAA's claim that would have been revealed but for the limitations of Multimedia's resources simply does not appear plausible to us.

Two of Multimedia's challenges to the validity of the Nielsen data were not well taken. The dropping of WBBM-TV, the flagship station of "Donahue," from the Nielsen study did not adversely affect Multimedia, because it was shown by MPAA that the various additions and subtractions of stations in the study carrying "Donahue," on the whole, probably inured to the benefit of Multimedia, rather than to its detriment. Multimedia's comparison of the ROSP figures with MPAA's Nielsen data did not reveal differences that were unexplainable. We are satisfied that, in the case of WTBS programs, non-DMA viewing would indeed be lower than the Neilsen data, because much of the area within the Atlanta DMA is counted as distant viewing as far as WTBS is concerned. Whatever further discrepancies remain are more than adequately explained by the frequency of the broadcasts of the programs (which Multimedia did not take into account) and the number of other markets where the program was aired in addition to the one market Multimedia measured.

The third criticism Multimedia raised, that many of its specials are broadcast during times of the year which are not measured by the Nielsen data has some validity which we discuss below.

Comparing the Nielsen data from 1983 to 1984, we note that MPAA's relative share increased 0.13%, NAB's relative share decreased 9.2%, and Multimedia's relative share decreased 25.7%. While small fluctuations in the relative shares of the three parties might not warrant a change in awards, we consider NAB's loss of 9.2%, and Multimedia's loss of 25.7% sufficient evidence of changed circumstances to justify lowering their awards in 1984.

Taking Multimedia up first, Multimedia requested an increased award based upon having distributed more specials in 1984 than ever before, and upon the introduction of a new show, "Sally Jessy Raphael." This is intended to give the impression that, strictly in time, more of Multimedia's product was in distribution in 1984 than ever before. However, by Multimedia's own exhibit, the amount of time of Multimedia's product on television stations remained completely stable from 1983 to 1984.

The amount of Multimedia product on television broadcast stations is not, alone, the relevant consideration. The relevant consideration is how much of Multimedia's product was retransmitted by cable systems on a distant signal basis in 1984 and what was the marketplace value of those programs. Although Multimedia's program time may have remained the same from 1983 to 1984, its Nielsen viewing hours dropped 25.7%. We stated in last year's proceeding that the overall reliability of the Nielsen study may be somewhat less when the focus is on individual programs. Implicit in that statement is the Multimedia argument that its specials which are not aired during sweep periods are therefore overlooked by the Nielsen study. We will contiuue to give some credence to this argument, although we recognize that MPAA's specials may similarly suffer, and also, considering the continued strong showing of "Donahue" in 1984, we have decided not to lower Multimedia's award by the full 25% loss in the Nielsen data, but to give it a lesser decrease of 17.5% from 1983. The result is a lowering of Multimedia's award from 1.0% to 0.825%.

However, for Multimedia to continue to prevail in its argument that its programs are overlooked by Nielsen, it must provide the Tribunal with more information. We would like to see not simply the amount of Multimedia product on television broadcast stations, but the dates the programs were aired, whether the programs aired within or outside a Nielsen sweep period, and which cable systems carried them on a distant signal basis, and their subscribership.

Regarding NAB, we have decided to decrease its award from 0.8% to 0.7%, or about 12.5%. This exceeds the loss in Nielsen viewing strength which we have already stated was 9.2%. In the last proceeding, we agreed that MPAA's decision not to categorize parades, political programs, minor sports programs, programs on specialty stations, and programs syndicated on commonly-owned stations as syndicated programs was incorrect and probably resulted in an underrating of NAB's claim. This year MPAA has made the appropriate corrections, and we find that the credit we gave NAB on this point probably exceeded the amount that was warranted. Additionally, in the last proceeding, we noted in the findings of fact and in the conclusions of law that NAB made no effort to demonstrate the marketplace value of its programs. However, based on testimony of previous proceedings, we gave credit to NAB's programs for their regional appeal. We note again, this year, that NAB has included no evidence on the marketplace value of its works, and we wish to state that mere reliance on previous testimony is not sufficient. As MPAA observes in its proposed findings, although certain of NAB's

programs remain the same each year, such as the WPIX programs, a great number of them are new and their value should be established on the record for the Tribunal. Our decrease in the award to NAB reflects the changed Nielsen viewing percentages, a revision of our view that the Nielsen date underrated NAB for certain categories of programs, and NAB's lack of established marketplace value for many of its works.

We also note questions we have on the completeness of NAB's presentation. For those carrying stations which were not underlined, which meant they were not carried by Form 3 systems, NAB could only surmise that they could have been carried by Form 1 or 2 cable systems, but could not say so definitely. There were six programs for which both the originating station and the carrying stations were not underlined and therefore could have been entirely outside of the universe of this proceeding.

We were also troubled by the allegation of flaws in the collection and verification of data from the NAB-represented broadcast stations raised by MPAA.

Together, these questions we have about the programs which NAB could not verify were retransmitted by cable systems on a distant signal basis, and the possibility of flaws in the exhibits, did not enter into our lowering of NAB's award to 0.7%, but these concerns will need to be met in the future if NAB's level of award is to be maintained.

Last year we reserved the question of programs broadcast on commonly-owned stations, and requested better elucidation on the issue for this proceeding. While we do not necessarily disagree with MPAA's description of the nature of programs broadcast on commonly-owned stations, those programs nonetheless do meet our definition of a syndicated program, they are viewed, and may have some marketplace value, and we note that on other occasions MPAA has consistently urged the Tribunal to makes its allocation on Nielsen viewing alone.

Finally, in the last proceeding, the Tribunal did not find sufficient record evidence to justify making separate allocations in the Phase II Program Suppliers category for the basic fund, the 3.75% fund and the syndex fund. Again, in this proceeding, we find no basis for making separate allocations.

Allocations

Pursuant to the Phase I settlement, the Tribunal has adopted the following allocation to categories of claimants in Phase I of the 1984 cable copyright royalties fees available for distribution:

After subtracting the stipulated award to National Public Radio of 0.18% of the entire fund,

Category	Basic	3.75%	Syndex
Program Suppliers	67.10	72.00	95.50
Joint Sports	16.35	17.50	0
Public Broadcasting Service	5.20	0	0
Commercial Television	5.00	5.00	0
Music	4.50	4.50	4.50
Devotional Claimants	1.10	0.75	0
Canadian Claimants	0.75	0.25	0
Commercial Radio	0	0	0

The allocation adopted by the Tribunal under Phase II for the individual claimants is as follows:

Program Suppliers:
Motion Picture Association of America, Inc. 98.475%
Multimedia Entertainment, Inc. 0.825
National Association of Broadcasters 0.700

Dated: March 11, 1987.

J.C. Argetsinger,

Chairman.

[FR Doc. 87-5659 Filed 3-16-87; 8:45 am]

BILLING CODE 1410-09-M

Federal Register

Tuesday
March 17, 1987

Part III

Department of Education

Office of Special Education and Rehabilitative Services

Handicapped Special Studies Program; Final Annual Evaluation Priority; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Handicapped Special Studies Program; Final Annual Evaluation Priority

AGENCY: Department of Education.

ACTION: Notice of final annual evaluation priority.

SUMMARY: The Secretary announces an annual evaluation priority for cooperative agreements under the Handicapped Special Studies program. This priority has been selected to ensure effective use of program funds and to meet requirements of the Education of the Handicapped Act (EHA).

EFFECTIVE DATE: This final annual evaluation priority takes effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments. If you want to know the effective date of this final annual priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Susan Sanchez, Research Projects Branch, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3094–M/S 2313), Washington, DC 20202. Telephone: (202) 732–1117.

SUPPLEMENTARY INFORMATION: The Handicapped Special Studies program, authorized by section 618 of Part B of the Education of the Handicapped Act (EHA), as amended, supports studies to evaluate the impact of the Act, including States' efforts toward providing a free appropriate public education to handicapped children (20 U.S.C. 1401, 1411 *et seq.*). Section 618 of the Act requires that the results of these studies be included in the annual report submitted to the Congress by the Department.

Under section 618(c) of the EHA, the Secretary is expressly required to submit to the appropriate committees of each House of the Congress and publish in the Federal Register for review and comment proposed annual priorities for evaluations conducted under section 618.

A notice of proposed annual evaluation priorities was published in the Federal Register on July 14, 1986 at 51 FR 25490, which contained the following four proposed priorities for fiscal year 1987 awards under this program:

(a) Availability of Qualified Special Education Personnel;

(b) Federal Analyses and Support;

(c) State Educational Agency/Federal Evaluation Studies Projects; and

(d) Educational Progress of Handicapped Students.

The Secretary intends to award individual contracts to carry out the studies described in priorities (a), (b), and (d).

Under the Department's procedures, requests for proposals for individual contracts are announced in the *Commerce Business Daily* pursuant to the Federal Acquisition Regulation in 48 CFR Chapter 1, and are not subject to section 431 of the General Education Provisions Act, which establishes procedures for promulgating rules and regulations that apply to the Department's programs. The priority described under (c), *State Agency/Federal Evaluation Studies Projects*, has been selected as a final priority for cooperative agreements to be entered into by the Secretary and State agencies and, therefore, is included in this notice of final annual priority, in accordance with section 431.

Summary of Comments and Responses

The public was given ninety days to comment on the priorities. Seven letters were received. Comments addressing proposed contractual activities will be considered when requests for proposals are developed. The comments relating to the priority on State Agency/Federal Evaluation Studies and the Department's responses are summarized below:

Comment: One commenter recommended that the Handicapped Special Studies Program use the work of the National Regional Resource Center (RRC) Panel on "Indicators of Effectiveness in Special Education" as its basic framework. The commenter explained that this reference source lists indicators drawn from the effectiveness literature, special education, independent living research, and State educational agency concensus documents on effectiveness and quality. A second commenter supported this recommendation and suggested that the fiscal year 1987 priority should use these effectiveness indicators in the evaluation studies. The commenter felt that the indicators can be used as the basis for developing a wide body of evaluation evidence which describes effectiveness in special education programs.

Response: No change has been made. The priority as stated does not preclude an applicant from using the National RRC Panel document as the framework for their research. The Secretary intends to review and consider the potential for incorporating the work of the National RRC Panel into future Special Studies program planning.

Comment: One commenter strongly supported the invitational priority to evaluate the effectiveness of delivering special education and related services to children with handicaps in regular educational placements. However, the commenter recommended that parents of students with learning disabilities be involved in the awarding of and the oversight of grants.

Response: No change has been made. Parents of children with handicaps, but not necessarily children with learning disabilities, are asked to participate on the review panels for applications. Participation is not limited to parents of children with learning disabilities because the priority includes children with a wide variety of handicapped conditions. Oversight of awards is provided at the Federal level by the appropriate Department personnel. Individual grantees may include parents of children with handicaps in the administration of projects.

Comment: One commenter recommended that the invitational priority to study the impact of interagency coordination on the nature and amount of related services that are provided be given an absolute or competitive preference. The commenter added that there is little data currently available on this issue, but that State and local agencies have major concerns about the provision and funding of related services.

Response: No change has been made. Data on children receiving related services is currently collected on a national level in the State data reports which are submitted annually to the Department. The Special Education Expenditure Study will be reporting data on both the nature of related services provided and on expenditures for these services beginning in fiscal year 1987. The Department also has other activities under way examining interagency coordination. Once these activities are completed, a determination will be made concerning the need for a study of the impact of interagency coordination on the provision of related services.

Comment: One commenter recommended that the Secretary should be allowed to enter into cooperative agreements with agencies other than State educational agencies to ensure that needed evaluation studies are completed. The commenter felt that the expansion of the types of agencies and organizations that can enter into a cooperative agreement would improve the number and quality of proposals

received, and ensure that the necessary evaluation studies are completed.

Response: A change has been made. The Education of the Handicapped Act Amendments of 1986, Pub. L. 99-457, expanded the eligible applicants for cooperative agreements to include other State agencies in addition to State educational agencies.

Priority

State Agency/Federal Evaluation Studies Projects

This priority supports evaluation studies to assess the impact and effectiveness of programs assisted under the Education of the Handicapped Act. Within this priority, studies are invited that address: (1) The impact and effectiveness of delivering special education to handicapped children in regular educational placements, and (2) the impact of interagency coordination on the nature and amount of related services that are provided. However, applications that meet the invitational priorities described in items (1) and (2) will not receive a competitive or an absolute preference over other applications that propose evaluation studies that assess the impact and effectiveness of programs assisted under the Education of the Handicapped Act. In accordance with section 618(d) of the Act, as amended by the Education of the Handicapped Act Amendments of 1986, the Secretary will enter into cooperative agreements with State agencies to carry out these studies.

(Catalog of Federal Domestic Assistance Number 84.159; Handicapped Special Studies)

(20 U.S.C. 1418)

Dated: March 3, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-5714 Filed 3-16-87; 8:45 am]

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Federal Register

Tuesday
March 17, 1987

Part IV

Department of Education

National Institute on Disability and Rehabilitation Research; Final Funding Priorities for Research Fellowships; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Final Funding Priorities for Research Fellowships

AGENCY: Department of Education.

ACTION: Notice of funding final priorities for research fellowships for fiscal year 1987.

SUMMARY: The Secretary of Education announces final funding priorities for research fellowships to be supported by the National Institute on Disability and Rehabilitation Research (NIDRR) in fiscal year 1987. In the past NIDRR has funded some fellowships without specifying priority areas, as well as a number of fellowships based on announced priorities. The regulations provided that the Secretary may set priorities when there are critical areas to be addressed. The Secretary has determined that research fellows are needed in the following priority areas; study of rehabilitation facilities, survey of professional development and training in rehabilitation research; analysis of employment issues related to learning disabilities; assessment of rehabilitation technology research; rehabilitation technology diffusion networking; and assessment of efforts in prevention of secondary disability.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: National Institute on Disability and Rehabilitation Research. Telephone (202) 732-1207; deaf and hearing impaired individuals may call (202) 732-1198 for TTY services.

SUPPLEMENTARY INFORMATION: Authority for the fellowship program of NIDRR is contained in section 202(d) of the Rehabilitation Act of 1973, as amended by Pub. L. 95-602, Pub. L. 98-221 and by Pub. L. 99-506. The purpose of this program is to build research capacity and also to allow the Secretary to obtain the benefits of research conducted by highly qualified individuals. This research has a direct bearing on the development of programs, methods, procedures, and devices to assist in the provision of rehabilitative services to individuals. NIDRR fellowship regulations authorize the Secretary to establish priorities for fellowships by reserving funds to support fellowships in particular areas.

NIDRR published proposed priorities and an application notice in the Federal Register on October 14, 1986 (51 FR 36664). Public comments were received and analyzed. A summary of those comments and the Secretary's responses to them are included in a later section of this notice. NIDRR did not alter the priorities in reponse to these comments.

The closing date for receipt of applications based on these priorities was January 15, 1987. This notice does not solicit additional applications.

The following six priorities represent areas in which NIDRR will support research and related activities through priority fellowships. The publication of these funding priorities does not bind the United States Department of Education to fund fellowships in any or all of these research areas.

Final Funding Priorities

NIDRR has set an absolute priority to fund fellowships in the following areas:

Fellow to Study Rehabilitation Facilities

Vocational rehabilitation facilities provide a wide range of rehabilitation-related services to disabled clients, including services contracted for by state service agencies. The actual number of facilities and the number of clients they serve have increased in recent years. A recent survey of accredited vocational facilities (University of Wisconsin, Stout, 1985) indicates that mental retardation and mental illness account for approximately two-thirds of all clients of these facilities (with 15 percent and 51 percent of the total respectively). Recent research (e.g., University of Arkansas, 1985; J. Noble, 1985) indicates that the most effective strategy to promote employment for these two populations is the "place-train" method in which training is conducted in the actual competitive employment in which the work will be performed. Facilities, in contrast, rely heavily on a facility-based "train-place" model of vocational development. If vocational facilities are to serve effectively mentally retarded and mentally ill target groups, they must develop new approaches.

In addition, few clients currently served in facilities fall within the primary disability categories which are associated with the disability management approaches—job retention and return-to-work—currently used in business and industry (Menninger Foundation, 1985). The disability management approach focuses on individuals who become disabled while employed, and thus is not appropriate to the needs of chronically mentally ill and mentally retarded individuals, most of whom do not experience the onset of disability while employed. Thus, it would be important to determine whether facilities can serve effectively as resources to industry in abetting disability management, particularly to small firms which cannot operate their own employee assistance programs.

An absolute priority will be given to applications for a fellowship to:

- Review the current practices of vocational rehabilitation facilities in promoting competitive employment for their clients of various disability groups;
- Analyze the need and potential for rehabilitation facilities to adopt the alternate "place-train" strategy of vocational development, including the personnel development and training needs which would be associated with such a change;
- Investigate the feasibility of rehabilitation facilities developing technical assistance and related service programs to serve business and industry in an effort to improve the management of disability among employees, including the related personnel development and training needs; and
- Assess the potential of facilities to respond to the interests of the Social Security Administration in identifying improved methods for rehabilitating recipients of Supplemental Security Income benefits and for reducing costs of the Social Security Disability Insurance Program.

Fellow to Survey Rehabilitation Research Training

There are currently no standards for assessing professional development in rehabilitation research in the various relevant fields—e.g., rehabilitation psychology, physiatry, nursing, occupational and physical therapy, prosthetics and orthotics, orthopedic, surgery, neurology, rehabilitation engineering, and other medical and nonmedical specialties. Nor is there a general awareness of practices in effect in universities and hospitals regarding standards and guidelines for training or accrediting professionals engaged in research.

NIDRR funds training in rehabilitation research as well as research activities. In reports accompanying the 1985 appropriations bill for NIDRR, Congress noted the need for additional training in rehabilitation research. NIDRR believes that not enough is known about current needs and practices in developing research capacity in the various disciplines involved in rehabilitation.

An absolute priority will be given to applications for a fellowship to:

- Determine the current deployment of professionals in rehabilitation research by discipline, credentials, and

types of training, and assess needs for additional training in various areas;

• Identify, through surveys of professional associations and academic sources, current practices in training and providing credentials to researchers in rehabilitation-related fields;

• Characterize current practices in terms of entry requirements for research training, amount of didactic and experimental training, formal and informal mentorships, internships and other types of supervision, types of support for research training, duration and intensity of training, accreditation of the training sources, evaluation of trainee achievement, credentials earned, and how those trained make use of the new research expertise;

• Study and describe preservice and inservice training practices for research in at least one area which is comparable to rehabilitation in several important characteristics, and assess the applicability of some of those practices to training for rehabilitation research; and

• Provide a final report to NIDRR including the findings of all of the above inquiries and recommendations for options to strengthen training in rehabilitation research.

Fellow to Study Employment Issues Related to Learning Disabilities

• Persons with severe learning disabilities have considerable difficulty in obtaining and maintaining employment; this problem is often attributable to behavioral and social skills deficits. Estimates of unemployment among learning disabled adults range from 37–75 percent, generally depending on the age of the group studied (W.J. White, 1982; Crimando, 1984).

While learning disability is generally an aggregate of various perceptual and communication difficulties, inappropriate social and interpersonal behavior is a frequent result.

Any efforts to enhance employability and promote employment for this population must be based on an awareness of behavior patterns associated with successful employment. Such efforts also require knowledge of both effective intervention programs to enhance social skills and strategies to modify jobs or worksites to increase the incidence of employment and job retention in this group. Indications are that many strategies used with other disabled and nondisabled populations are not effective with learning disabled individuals, while some techniques seem to have exceptional applicability. (Crimando, 1984).

NIDRR is interested in advancing the state-of-knowledge in this area by contributing to an awareness of the differences in behavior and social skills typically associated with employment and unemployment in this population, and by aggregating knowledge of effective interventions to increase the incidence of successful employment for this group.

An absolute priority will be given to applications for a fellowship to:

• Identify behavior patterns prevalent among different subgroups of adults with severe learning disabilities, particulary behavioral problems likely to affect job performance and interpersonal relations on the job;

• Undertake an analysis, using employment data bases, existing literature, consumers, counselors, and employers as information sources, to determine whether specific behavior characteristics or patterns can be used to predict employability and success in different types of jobs;

• Survey and assess intervention strategies which indicate a probability of success in assisting learning disabled youth and adults to develop requisite social skills;

• Survey any existing models or strategies for job modifications which have been successful with this population; and

• Provide a final report on these findings which includes strategies for the dissemination of this information to appropriate users such as job counselors, employers, educators, consumers, and family members for possible incorporation into individualized education programs and individualized written rehabilitation programs.

Fellow in Evaluation of Rehabilitation Technology Research

• NIDRR and other Federal agencies support research and development of rehabilitation technology through a number of mechanisms, including a major program of Rehabilitation Engineering Centers (REC's). NIDRR currently allocates about $10,000,000 per year for the area of technology research.

Developments in technological aids and devices for the total population, including disabled and nondisabled individuals, have been both rapid and extensive in recent years, because of general improvements in available materials, solid-state circuitry and microprocessors, and increased public responsiveness to the use of technology. Private business and industry, as well as academia and government, are making major investments in the development, adaptation, and distribution of technological devices relevant to disabled individuals, including computers, telecommunications, robotics, and environmental controls.

For planning purposes, NIDRR seeks periodically to evaluate the effectiveness and adequacy of research in various rehabilitation fields, including technology. NIDRR has found that there is a paucity of models and methods to be applied evaluating research programs, particularly those in fields such as rehabilitation. There has been no systematic assessment of the feasibility and utility of applying various types of evaluation strategies to rehabilitation research. Possible evaluation approaches include, but are not limited to: studies of impact on clients; cost effectiveness studies; studies of the utilization of research projects; management-by-objective assessment; evaluability assessment; process evaluations; and assessment of the effects on future research and development. Evaluation approaches may include longitudinal studies, case studies, cross-sectional studies, management analyses, and product evaluation, among others.

NIDRR believes there is a need for a study of the state-of-the-art in research evaluation, with an assessment of the relative usefulness of various approaches for the evaluation of fields of research, such as rehabilitation technology. A research study would yield alternative models for analysis of the technology program, including assessment of the appropriateness of the focus and priorities of the program; assessment of productivity and accomplishments; usefulness of technology research to the rehabilitation field and to disabled people; its relationships to private sector development and distribution activities; and its relation to technology research sponsored by other Federal agencies.

An absolute priority will be given to applications for a fellowship to:

• Review the relevant literature on evaluation of research programs in related areas, and review the existing literature on the technology program;

• Analyze the utility of various evaluation approaches for the assessment of the rehabilitation technology research program;

• Develop alternative assessment models which consider such factors as purposes and objectives of the technology research program; quality of research and management; quality, level, and appropriateness of personnel engaged in research and development and clinical services; needs for personnel development and training ir

research; research outcomes; importance and utilization of research products; appropriateness of priority areas of activity; relationship of REC's and the research programs of the REC's to other technology research and development, in both the private and public sectors; the role of the NIDRR technology research program, especially the REC's, in producing clinical and research leaders in rehabilitation technology; institutional location and support to the technology research program; level and quality of client-services provided by REC's or other research projects; and other appropriate factors to be considered in an evaluation;

• Suggest various appropriate data collection strategies and data analysis methods which could be used for an evaluation of the technology research program, utilizing various types of data acquisition, including evaluation of written reports, use of self-reported and mail survey data, information collected from external sources, and on-site surveys; and

• Identify other sources of rehabilitation technology research and development for comparison purposes and to assess the extent of duplication or potential synergy.

Fellow in Rehabilitation Technology Diffusion Networking

There is a great disparity in the availability of technological aids and devices and the extent of their use by disabled individuals. There are many reasons for this gap, including lack of awareness about or availability of technological devices, costs, unsuitability of existing devices for specific individual needs, and lack of the personal assistance necessary to use the device or the interpersonal support to encourage its use.

The unmet needs of disabled persons for assistive devices have not been thoroughly documented. However, the 1979 Health Interview Survey published by the National Center for Health Statistics, estimated that 3.5 million noninstitutionalized adults, two million of them under age 65, need either assistive equipment or the aid of another person to perform basic functions of personal care, while an estimated additional 4.1 million adults need such help to perform general home management activities. An unknown number of disabled persons require assistive devices in order to maintain or improve job performance or to enhance the quality of their lives in social, cultural, educational, and recreational areas.

One approach to promote wider and more effective use of technological devices could be through the Independent Living Centers (ILC's), by establishing a network of resource centers for information on available technology and on community and other resources for individualized adaptations. Such an approach would enhance the capacity of ILC's individually and as a network, and would stimulate the identification, development, and use of community resources and volunteers.

An absolute priority will be given to applications for a fellowship to:

• Study ways to make information on assistive technology available through existing Independent Living Centers, including connections to existing databases on aids and devices (e.g., ABLEDATA) and plans to provide necessary training for staff to implement such information systems;

• Identify gaps in information and resources needed to make such a system feasible for ILC's and effective for disabled people;

• Review existing local programs involving volunteers and consumers in the provision of information about and assistance with technological devices;

• Design a model for ILC's to use to assess the availability in their areas of standard technological devices and the local resources for making individual adaptations, including the availability of community groups and volunteers;

• Design one or more models for creating local volunteer councils involving professionals, consumers, and other volunteers, and assess liability issues involved in the use of volunteers and other community resources to adapt equipment; and

• Provide a model system which could be used by Independent Living Centers to establish information systems locally or to develop a national technology information network, including software and documentation for the system.

Fellow in Prevention of Secondary Disability

About 34.4 million Americans are disabled, over 25 million of whom have moderate or severe impairments that impede their abilities to carry out their major activities. Many disabled people are at high risk for further impairment and further loss of functional and daily living skills. This further loss of function may result from an increase in the severity of the disabling condition, as is often the case with a progressive disease such as multiple sclerosis and certain types of hearing or vision loss. Such a loss may also be caused by an additional related impairment for which the individual is at risk; circulatory or vision problems resulting from diabetes, or emotional impairment or social disabilities resulting from a traumatic injury or a chronic condition are examples of this type of additional disability. Finally, disabled individuals are at risk of further disability from the incidence of any impairment or disabling condition to which people are susceptible generally, as well as to the effects of aging in disabled persons.

Whatever the etiology, the result is an increase in the severity of disability and the limitation in function. At present, the field has only limited knowledge of the problems and causes of additional disability, and lacks strategies to prevent the occurrence of further disability, or so-called "secondary prevention".

An absolute priority will be given to applications for a fellowship to:

• Analyze the incidence and prevelance of additional impairments and disabilities among disabled people, and assess the extent to which disabled people become more disabled;

• Identify those disabilities most associated with additional risk;

• Identify Federal legislation which could have an impact on the prevention of further disability among disabled persons;

• Review the existing research on the topic and create an annotated bibliography;

• Identify current strategies to prevent further disability among disabled people;

• Identify priority areas for additional prevention efforts, including the disability groups and age groups associated with the greatest incidence of preventable secondary disabilities; and

• Conduct an in-depth analysis of one of the following issues, documenting past and present efforts and recommending areas for further research:

(1) One or more disability groups at high risk for increase in disability and for whom secondary prevention measures have been inadequate, including development of specific strategies to assist the subject population; or

(2) Extent and quality of existing public education efforts aimed at secondary prevention, including methods used by physicians and hospitals, related health personnel and voluntary organizations; or

(3) Role of fitness and recreation in the prevention of further disability, with emphasis on those disabilities where specific strategies are needed to effect

maintenance of physical function and social skills; or

(4) The role of assistive devices in secondary prevention, especially as related to the physiology of muscle functioning and in the areas of communication and socialization.

Summary of Comments and Responses

The National Institute on Disability and Rehabilitation Research received several comments in response to the notice of proposed priorities. Most of the comments endorsed the priorities as written. Those comments which suggested changes in the priorities, and the Secretary's responses to them, are summarized below.

Comment: One commenter suggested that the priority for a fellow to study rehabilitation facilities should be expanded to include several additional emphases, such as an analysis of operations of external training sites, a study of the impact of revisions to the Fair Labor Standards Act, and an analysis of the impact of the supported employment movement on community-based facility operations.

Response: No change has been made. The Secretary believes that these issues can be examined under the scope of the priority as now written and prefers to leave specifics of the approach to the fellowship applicants.

Comment: One commenter stated that the priority for the study of rehabilitation facilities is biased toward an assumption that facilities do not effectively serve certain populations and that they must adopt the "place-train" approach.

Response: No change has been made. The preamble to the priority discusses findings of previous studies which indicated that certain strategies were preferable. However, the requirements for the fellowship studies indicate that the fellow should "review current practices" and "analyze the need and potential for rehabilitation facilities to adopt the place-train strategy." Thus, the fellow will examine the issues and hypotheses presented in the priority statement.

Comment: One commenter urged that the priority for a study of rehabilitation facilities not focus exclusively on mental disabilities, but include visual impairment and other disabilities.

Response: No change has been made. The work scope described in the priority encompasses other disabled populations as well as those with mental illness or mental retardation. However, the Secretary believes it is important at this time to investigate more effective means for serving mentally disabled clients in rehabilitation facilities, and thus these groups must be one focus of the study.

Comment: One commenter urged that the priority on assessing the state-of-the-art in rehabilitation research training include independent living in the listing of relevant disciplines.

Response: No change has been made. The only listing of relevant fields is a list of academic disciplines in which research or clinical degrees are granted. As the commenter makes clear, academic instruction in independent living is limited to individual courses within other disciplines such as rehabilitation counseling. Training in rehabilitation research may involve research about issues of independent living from the perspective of any of the many disciplines related to rehabilitation.

Comment: One commenter suggested that the priority for the study of training in rehabilitation research should require a study of the affirmative action practices for assuring that disabled individuals are trained as rehabilitation researchers.

Response: No change has been made. The Secretary believes that there are a number of significant issues associated with the prevalence, characteristics, training, and distribution of disabled researchers in the rehabilitation field, and that a study of these issues would be warranted. However, the purpose of this particular fellowship priority is to examine academic practices in various disciplines, and this scope of work is already very extensive for one fellowship year. Prospective applicants may certainly propose to examine affirmative action practices within this priority area, but are not required to do so. Interested parties may wish to submit applications for a study of the affirmative action issues under a future fellowship competition that is not priority-based, or under one of the investigator-initiated grant programs.

Comment: One commenter urged the adoption of an additional priority to review the literature related to patient/client/family compliance with medical and rehabilitation treatment regimens.

Response: No change has been made. An individual fellowship applicant may elect to include an analysis of compliance as part of his or her approach to the issue of prevention of secondary disabilities. However, the Secretary does not want to unduly restrict the applicant by requiring this as part of the approach to the problem. NIDRR is aware of the importance of the prevention of secondary disabilities, and, as the commenter indicates, compliance is a critical issue in prevention. NIDRR may also elect to fund additional research in this important area through other program mechanisms.

(Catalogue of Federal Domestic Assistance No. 84.133F, National Institute on Disability and Rehabilitation Research)

(Program Authority: 29 U.S.C. 761a(d))

Dated: March 3, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-5713 Filed 3-16-87; 8:45 am]

BILLING CODE 4000-01-M

federal register

Tuesday
March 17, 1987

Part V

Department of Agriculture

7 CFR Part 8

4-H Club Name and Emblem; Final Rule

DEPARTMENT OF AGRICULTURE

7 CFR Part 8

4-H Club Name and Emblem

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This rule adopts as a final rule, the proposed rule published in the Federal Register on November 24, 1986, 51 FR 42539. The final rule amends the current rules and regulations on authorization of the use of the 4-H Club Name and Emblem as published in the Federal Register on August 2, 1985, 50 FR 31582, by clarifying the definition of terms used in this part, and further defining and expanding use of the 4-H name and emblem in 4-H fund-raising activities.

EFFECTIVE DATE: April 16, 1987.

FOR FURTHER INFORMATION CONTACT:
Dr. Donald Stormer, Deputy Administrator, 4-H—Youth Programs, Extension Service, U.S. Department of Agriculture, Washington, DC 20250, Telephone: 202/447-5853
or
Dr. V. Milton Boyce, Assistant Deputy Administrator, 4-H—Youth Programs, Telephone: 202/447-6527

SUPPLEMENTARY INFORMATION: On November 24, 1986, the Department of Agriculture published a proposed rule in the Federal Register (51 FR 42539) which proposed to amend the regulations on authorization for use of the 4-H Club Name and Emblem as they appear in 7 CFR Part 8. The existing regulations which were published as a final rule in the Federal Register on August 2, 1985 (50 FR 31582) established procedures for authorizing use of the 4-H Club name and emblem. The proposed regulations were intended to provide clarification with respect to the specific delegations of authority for authorizing use of the 4-H Club name and emblem at the various administrative levels and modification and clarification of the section on use of the 4-H name and emblem in fund raising.

Written comments were received from four persons in response to the proposed changes. All of these comments were favorable to the proposed changes. One comment related to the section on definitions and the need for including independent cities in addition to county extension offices in the definition of County Cooperative Extension Services.

It has been determined that the phrase, "or equivalent Extension offices" be added to Section 8.3, 2nd paragraph to cover 4-H units in dependent cities.

A summary of the amendments to the final rule follows:

(1) Section 8.3. Definitions

This section includes specific definitions of the Cooperative Extension Service, State Cooperative Extension Service, and County Cooperative Extension Service and equivalent Extension offices.

(2) Section 8.9. Use in 4-H Fund Raising.

This section is expanded to provide for use of the 4-H name and emblem on, or in association with, commercial products and services when the effect is to promote 4-H educational programs. Such use of the 4-H name and emblem, including its use in tributes to 4-H contained on or associated with commercial products or services, will be permitted in accordance with this policy, as long as no endorsement or the appearance of an endorsement of the product is either intended or effected and all moneys received, less those necessary to cover reasonable expenses, are expended on behalf of 4-H educational programs.

Executive Order 12291

These regulations were reviewed under the USDA criteria established to implement Executive Order 12291, "Federal Regulations." It was determined that this action should not be classified as a major rule under those criteria. It will not have an effect on the economy of $100 million or more, nor cause a major increase in costs or prices, nor cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based firms to compete with foreign-based competitors.

Regulatory Flexibility Act

This Department has certified that this document would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Therefore, no regulatory flexibility analysis has been prepared.

Environmental Impact Statement

This regulation will not significantly affect the human environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

Any information collection or record-keeping requirements imposed on the public by this rule will not be implemented until such time as they have been approved, in accordance with section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*, by the Office of Management and Budget.

List of Subjects in 7 CFR Part 8

4-H Club signs and symbols.

For the reasons set out in the preamble, Part 8 of Title 7 of the *Code of Federal Regulations* is amended as set forth below.

PART 8—[AMENDED]

1. The authority citation for Part 8 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 707.

2. The following definitions are added in alphabetical order and the phrase "The term" is removed from the definition of "4-H Club Name and Emblem" in § 8.3:

§ 8.3 Definitions

"Cooperative Extension Service" as used in this part includes the entire Cooperative Extension System consisting of the Extension Service, United States Department of Agriculture; the State Cooperative Extension Services; and the County Cooperative Extension Services.

"County Cooperative Service" as used in this part refers to a county Extension office or equivalent Extension office operating under a State Cooperative Extension Service.

"Extension Service, United States Department of Agriculture" as used in this part means the Federal agency within the United States Department of Agriculture which administers Federal agricultural cooperative extension programs.

* * * * *

"State Cooperative Extension Service" as used in this part means an organization established at the land-grant college or university under the Smith-Lever Act of May 8, 1914, as amended (7 U.S.C. 341-349); section 209(b) of the Act of October 26, 1974, as amended (D.C. Code, through section 31-1719(b)); or section 1444 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3221).

3. Section 8.9 is revised as follows:

§ 8.9 Use in 4-H fund raising.

(a) Fund-raising programs using the 4-H Name or Emblem may be carried out for specific educational purposes. Such fund-raising programs and use of the 4-H name and emblem on, or associated with, products, and services for such purposes must have the approval of

appropriate Cooperative Extension office, as follows:

(1) Approval of the County Cooperative Extension Service, or the appropriate land-grant institution, if the fund-raising program is confined to the area served by the County Cooperative Extension Service.

(2) Approval of the State Cooperative Extension Service, or the appropriate land-grant institution, if the fund-raising program is multi-county or Statewide.

(3) Approval of the Administrator of the Extension Service, United States Department of Agriculture, or a designee, if the fund-raising program is multi-State or Nationwide.

(b) When used to promote 4-H educational programs, the 4-H Club name and emblem, subject to obtaining authorization as provided in these regulations, may be used on or associated with products and services sold in connection with 4-H the fund-raising programs so long as no endorsement or the appearance of an endorsement of a commercial firm, product or service is either intended or effected. Tributes to 4-H contained on or associated with commerical products or services, when such products or services are used for the fund-raising activities, are subject to the requirements of this paragraph. All moneys received from 4-H the fund-raising programs, except those necessary to pay reasonable expenses, must be expended to further the 4-H educational programs.

Done at Washington, D.C. this 4th day of March, 1987.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 87-5738 Filed 3-16-87; 8:45 am]

BILLING CODE 87-5738-M

federal register

Tuesday
March 17, 1987

Part VI

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Parts 92 and 94

Change in Disease Status of Chile Because of Foot-and-Mouth Disease; Interim Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 92 and 94

[Docket No. 87-043]

Change in Disease Status of Chile Because of Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations to remove Chile from the list of countries free of rinderpest and foot-and-mouth disease because the existence of foot-and-mouth disease has been confirmed there. The effect of this action is to prohibit or restrict the importation into the United States from Chile of cattle, sheep, or other ruminants; swine; and the fresh, chilled, or frozen meats of those animals. We are taking this action as an emergency measure to protect the livestock of the United States from the threat of foot-and-mouth disease.

DATES: Effective date: Effective date of this interim rule is March 13, 1987. We will consider your comments if we receive them on or before May 18, 1987.

ADDRESSES: Send written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 87-043. Comments may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey Kryder, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 809, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8695.

SUPPLEMENTARY INFORMATION:

Background

Foot-and-mouth disease is a dangerous and destructive communicable disease of ruminants and swine. The morbidity rate within a herd usually approaches 100 percent.

On March 12, 1987, the Government of Chile notified us that an outbreak of foot-and-mouth disease has been diagnosed in cattle in Chile. The diagnosis of foot-and-mouth disease, Type O, was based on clinical signs and laboratory confirmation. Therefore, we must remove Chile from the list of areas that are determined to be free of foot-and-mouth disease.

The effect of this action is to prohibit or restrict the importation into the United States from Chile of cattle, sheep, or other ruminants; swine; and the fresh, chilled, or frozen meats of those animals. Removal of Special Provisions for Llamas and Alpacas.

The provisions of § 92.2(k), which we added to the regulations on January 23, 1987 (52 FR 2650-2653), specify that, among ruminants from Chile, only llamas and alpacas are prohibited entry into the United States, except through the Harry S Truman Animal Import Center (HSTAIC) under certain conditions. Because publication of this interim rule now prohibits or restricts importation into the United States of *all* ruminants from Chile, except through HSTAIC under certain conditions, we are removing the provisions of § 92.2(k) from the regulations.

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists, which warrants the publication of this interim rule without prior opportunity for public comment. Immediate action is required to protect the livestock of the United States from the threat of the introduction or dissemination of foot-and-mouth disease.

For this reason, we find that, pursuant to the administrative procedure provisions in 5 U.S.C. 553, prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective upon signature. We require that comments concerning this interim rule be submitted within 60 days of its publication. We will discuss any comments received and any amendments required in a final rule that will be published in the **Federal Register.**

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this interim rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

No importations of animals and products that are prohibited entry by this action—other than importations of llamas and alpacas—occurred during a 9-month period from June 29, 1983, to March 26, 1984, when Chile was recognized as free of FMD. During that period, a total of 299 llamas and alpacas were entered into the United States.

Under these circumstances, the Administrator of the animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act.

This interim rule contains no information or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Executive Order 12372.

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects

9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

9 CFR Part 94

African swine fever, Animal diseases, Exotic newcastle disease, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, Rinderpest, Swine vesicular disease.

Accordingly, 9 CFR Parts 92 and 94 are amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for Part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.2 [Amended]

2. In § 92.2, paragraph (k) is removed.

PART 94—[AMENDED]

3. The authority citation for Part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 42 U.S.C. 4331; 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.1 [Amended]

4. In § 94.1, paragraph (a)(2) is amended by removing the word "Chile."

§ 94.1 [Amended]

5. In § 94.11, paragraph (a) is amended by removing the word "Chile". Done at Washington, DC, this 13th day of March 1987.

John K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87–5860 Filed 3–16–87; 10:50 am]

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S.J. Res. 20/Pub. L. 100-9

To designate the month of March, 1987, as "Women's History Month." (Mar. 12, 1987; 101 Stat. 99; 1 page) Price: $1.00

S.J. Res. 46/Pub. L. 100-10

Declaring 1987 as "Arizona Diamond Jubilee Year." (Mar. 12, 1987; 101 Stat. 100; 2 pages) Price: $1.00